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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215699
Party	Defendant Holaira, Inc.
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Signature	/Dennis E. Hansen/
Date	11/16/2015
Attachments	Non-Confidential Transcript (FULL) of Trial Testimony of Dr. Dennis Wahr.pdf(222505 bytes)  Executed Errata Sheet of Transcript of Trial Testimony of Dr. Dennis Wahr.pdf(71683 bytes)  Non-Confidential Transcript (CONDENSED) of Trial Testimony of Dr. Dennis Wahr.pdf(171914 bytes)  Exhibit 3 (Non-Confidential) to Dr. Wahr Transcript.pdf(289725 bytes)  Exhibit 4 (Non-Confidential) to Dr. Wahr Transcript.pdf(73738 bytes)  Exhibit 5 (Non-Confidential) to Dr. Wahr Transcript.pdf(825234 bytes)  Exhibit 6 (Non-Confidential) to Dr. Wahr Transcript.pdf(61712 bytes)  Exhibit 7 (Non-Confidential) to Dr. Wahr Transcript.pdf(607094 bytes)  Exhibit 8 (Non-Confidential) to Dr. Wahr Transcript.pdf(2785543 bytes)  Affidavits of Service 7-28-15 and 11-16-15.pdf(91074 bytes)

## Deposition of Dr. Dennis Wahr - 7/ 2/ 2015 Boston Scientific Corporation and Asthmatx, Inc., et al. v. Holaira, Inc.

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1	UNITED STATES PATENT AND TRADEMARK OFFICE
2	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3	
4	Boston Scientific Corporation and
5	Asthmatx, Inc.,
6	Opposers, Opposition No. 91215699
7	and
8	Holaira, Inc.,
9	Applicant.
10	
11	
12	
13	
14	
15	DEPOSITION OF
16	DR. DENNIS WAHR
17	
18	
19	
20	
21	
22	
23	
24	Taken July 2nd th, 2015 By Alexis Jensen
25	

## Deposition of Dr. Dennis Wahr - 7/ 2/ 2015 Boston Scientific Corporation and Asthmatx, Inc., et al. v. Holaira, Inc.

		Page 2
1	APPEARANCES:	
2	, <b>_</b> ,	
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6	By: Mr. Dennis E. Hansen	
	For the Applicant	
7	Tot the Appheam	
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	Minneapolis, Minnesota 55402	
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	Email: bwalz@winthrop.com	
11	By: Mr. Bradley J. Walz	
	For the Opposers	
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## Deposition of Dr. Dennis Wahr - 7/ 2/ 2015 Boston Scientific Corporation and Asthmatx, Inc., et al. v. Holaira, Inc.

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19 PREVIOUSLY-MARKED EXHIBITS REFERRED TO:	
20 (NONE)	
21	
22	
23	
24	
25	

		Page 4
1	THE DEPOSITION OF DR. DENNIS WAHR,	
2	is taken on this 2nd day of July, 2015, at	
3	Oppenheimer, Wolff & Donnelly, LLP,	
4	Campbell Mithun Tower, Suite 2000,	
5	Minneapolis, Minnesota, commencing at	
6	9:07 a.m.	
7	DR. DENNIS WAHR,	
8	having been called as a witness, being duly	
9	sworn, testified as follows:	
10	EXAMINATION	
11	BY MR. HANSEN:	
12	Q. Good morning, Dr. Wahr. I'd like to start	
13	out today by just having a little bit of a	
14	discussion about your background, okay?	
15	A. Okay.	
16	Q. Let's start with your education, starting	
17	with college, and if you would, take me	
18	through to your highest professional degree	
19	or certification.	
20	A. Okay. I went I went undergrad college to	
21	a small liberal arts school in Michigan	
22	called Albion College, A-L-B-I-O-N. Then I	
23	went to medical school at Wayne State	
24	University in Detroit, and then did my	
25	internal medicine residency, three years, at	

		Page 5
1	the University of Michigan. Then I did my	
2	cardiology fellowship at the University of	
3	California, San Francisco, went to UCSF,	
4	three years there, where I became an	
5	interventional cardiologist.	
6	I spent one year on faculty there	
7	at UCSF. Then I went back to Michigan,	
8	where I practiced cardiology for about	
9	12 years at you know, in Ann Arbor, where	
10	I was in private practice at St. Joseph	
11	Mercy Hospital and was a clinical professor	
12	of cardiology at the University of Michigan.	
13	Then I took a leave of absence for	
14	one year to come to Minneapolis and and	
15	become a medical device entrepreneur. I	
16	started my own medical device company, and	
17	that was in the year 2001, and since and	
18	never went back. I never went back and	
19	practiced I took a one-year sabbatical	
20	and never went back.	
21	Q. When?	
22	A. And have been here ever since, for the last	
23	15 years.	
24	Q. Were you a Board-certified interventional	
25	cardiologist?	

		Page 6
1	A. Yes, yes, I was what they called triple	
2	Board-certified. You know, I was	
3	Board-certified in internal medicine. I was	
4	Board-certified in cardiology and	
5	Board-certified in interventional	
6	cardiology; all three different levels of	
7	Board certification.	
8	Q. Okay. What's the what's the difference	
9	between cardiology and interventional	
10	cardiology?	
11	A. Cardiologists do there's probably four	
12	big divisions of cardiology. There's	
13	interventional cardiology; there's	
14	electrophysiology; there's diagnostic	
15	cardiology, which would be things like	
16	echocardiographies and MRI scans, you know,	
17	they're almost like radiologists; and then	
18	there's intensive care cardiology, you know,	
19	working in ICUs and things like that.	
20	And they all have their separate	
21	Boards, so, you know, it just keeps getting	
22	more and more subspecialized. So, a	
23	cardiologist is kind of a generalist of	
24	cardiology, and, you know, now there's these	
25	four subspecialties of cardiology.	

		Page 7
1	Q. Okay.	
2	A. It's pretty amazing. It's pretty	
3	ridiculous.	
4	Q. What what does an interventional	
5	cardiologist do? Can you just describe	
6	that?	
7	A. Yeah, interventional cardiology is the part	
8	of cardiology that does procedures on	
9	patients, you know, and that's really the	
10	first thing they started doing were	
11	angioplasties. You know, in the mid '80s,	
12	that really was origin of interventional	
13	cardiology, fixing blocked arteries, working	
14	through a pinhole.	
15	That was the beginning of	
16	interventional cardiology, the field of	
17	interventional cardiology, but now it's	
18	gradually expanded to where interventional	
19	cardiologists do many different types of	
20	procedures, all minimally from a	
21	minimally-invasive approach. That's really	
22	what defines it.	
23	Q. When you were practicing as an	
24	interventional cardiologist, did you use	
25	medical devices?	

Page 8 1 A. Absolutely, yeah. 2 Q. What -- what sorts of medical devices? 3 A. Well, certainly balloon angioplasty 4 catheters; stents, you know, the wire mesh 5 cylinders that we put in to scaffold open 6 blood vessels; atherectomy devices, which is 7 where you go in and carve out the plaque, 8 you know, and remove it; closure devices, you know, where you go through pinholes to 9 10 close defects in the heart, you know, holes 11 between to atria and the ventricles, and 12 congenital abnormalities that are repaired 13 now through pinholes. 14 All of these things replaced the 15 need to have to have open-chest surgery. 16 And now, of course, the -- another big one 17 are the -- literally the percutaneous 18 valves. I mean, literally replacing valves 19 just through pinholes. I mean, those would 20 be the major areas of interventional 21 cardiology. 22 Q. Turning now to the entrepreneurial aspect of 23 your background. 24 In 2001, you mentioned that you 25 started --

Page 9 A. Yes. 1 2 Q. -- a medical device company. 3 What medical device company was that? 4 A. It was called Velocimed, V-E-L-O-C-I-M-E-D. 5 6 Q. What types of product or products did --A. We made --7 8 Q. -- Velocimed make? 9 A. We made three different medical products. 10 One was what's called an -- and at the time 11 this was really the first one. It's 12 something called an embolic protection 13 device. 14 One of the risks of doing 15 angioplasty was sometimes you could go in, 16 inflate a balloon to dilate an artery, but 17 debris could break off and go downstream, 18 you know, and if that happened, you could 19 have damage downstream. Like if that would 20 break off and go to an important place, like 21 the brain or the kidney or something like 22 that, that was one of the areas of 23 complications. 24 So, we created a little basket that 25 could catch that that we'd put in first and

		Page 10
1	then did the angioplasty, and if anything	
2	went down, you would catch it.	
3	Second product was something called	
4	a PFO closure device, which was an	
5	umbrella a little umbrella, miniature	
6	umbrella, that you could put through a	
7	pinhole and go in and close a hole between	
8	the right and left atrium of the heart.	
9	And the third one was what we	
10	called a navigation catheter, because one of	
11	the things that would start cardiologists	
12	from being able to do a procedure is if they	
13	couldn't get to that spot, you know, through	
14	the curving blood vessels. So, we made a	
15	catheter that could be, using a joystick,	
16	directed to go around sharp curves.	
17	St. Jude bought all three of those	
18	products in the year I started the	
19	company in 2001. St. Jude bought that	
20	company in 2005, and all three products are	
21	still are still being sold around the	
22	world today. That was the first company.	
23	Q. Were those products approved for sale by the	
24	FDA?	
25	A. All of them eventually achieved worldwide	
I		

Page 11 1 approval, including US. 2 Q. And what -- are you aware that the FDA 3 classifies medical devices in one of three 4 separate classes? 5 A. Yes. Q. And what -- what class of device were the 6 7 three devices sold by or created by 8 Velocimed? 9 A. Well, the embolic protection device and the 10 PFO closure device were Class 3 devices. 11 The three classes are, you know, literally 1, 2, 3, where 3 is the -- the highest level 12 13 of sophistication, and, therefore -- you 14 know, or potential risk and the most novel, 15 which then means it needs the most testing. 16 Class 1 devices are typically 17 devices that are the least amount of risk. 18 and they're often -- they are often devices 19 that are copies of other devices that are 20 out there, that have predicates, and 21 everything's known about them, and it's just 22 kind of like one more copy doing the copycat 23 thing. You know, they can get a label as a 24 Class 1. Label 2 is somewhere in between. 25 The navigation device was Class 2.

		Page 12
1	Q. Got it.	
2	A. But then my second company Lutonix,	
3	L-U-T-O-N-I-X, that was a Class 3 device	
4	too.	
5	Q. When did did you found Lutonix?	
6	A. I founded both of these companies.	
7	Q. And when when did Lutonix come into	
8	being?	
9	A. 2007, and CR Bard bought that company in	
10	2000 in December of 2011.	
11	Q. What product did Lutonix create?	
12	A. We made an angioplasty balloon that had a	
13	drug coating on it, and so, when you did	
14	the so, when you would do the	
15	angioplasty, the drug would transfer to the	
16	blood vessel wall, and the drug would then	
17	prevent the artery from re-narrowing, you	
18	know, after you did the angioplasty.	
19	Q. Is that angioplasty balloon approved by the	
20	FDA?	
21	A. Yes.	
22	Q. And you mentioned that it was a Class 3	
23	device?	
24	A. 3, yep. First first drug-coated	
25	angioplasty balloon in the world to be	

		Page 13
1	approved by the FDA. We got approval in	
2	2012.	
3	Q. Where are you currently employed Dr. Wahr?	
4	A. Holaira, H-O-L-A-I-R-A.	
5	Q. And when did you join that company?	
6	A. I joined it in September of 2012.	
7	Q. Did you found that company as well?	
8	A. No.	
9	Q. Who founded Holaira?	
10	A. An individual called Marty Mayse, and	
11	co-founded along with another person, an	
12	engineer named Steve Dimmer. They were	
13	co-founders.	
14	Q. When you joined the company in 2012, was it	
15	called Holaira?	
16	A. No, the company was originally founded in	
17	2008. That's when Marty Mayse and Steve	
18	Dimmer founded the company. So, when I	
19	joined the company, it was already four	
20	years old, and the original name of the	
21	company was InterventionalPulmonarySolutions	
22	[sic], all one word. They they called it	
23	IPS for short, to abbreviate it.	
24	Q. Let's talk about the Holaira well,	
25	actually, I should first ask you: What's	

		Page 14
1	your role at Holaira? What do you do there?	
2	A. I'm the CEO.	
3	Q. And have you always been the CEO?	
4	A. Yeah well, since they hired me, yeah, for	
5	the last three years, yeah.	
6	Q. Okay. Let's talk about the the products	
7	that Holaira creates.	
8	What what is the product that	
9	Holaira creates?	
10	A. We we have a product that's called the	
11	name of the product is dNerva, and what it	
12	is is it's a we use it to do a procedure	
13	called targeted lung denervation, and the	
14	and the system that does it we call the	
15	Holaira Lung Denervation System.	
16	Q. Can you describe for me what components	
17	there are to the Holaira Lung Denervation	
18	System?	
19	A. Yes, there are there's a the system	
20	has a console. The console does really	
21	three three things that are important.	
22	It has a it's the generator for the	
23	energy, you know, RF energy, radio frequency	
24	energy, which is the power we use to for	
25	the therapeutic effect, which I'll describe	

Page 15 in a minute. 1 2 It also has the pump in it, because 3 we have to circulate cold water, you know, 4 through the catheter while we do it. It 5 also has a -- so, therefore, it also has a 6 chilling -- a chiller in the console. And 7 then, of course, it has a user interface, 8 you know, which is a software program. 9 The console runs the dNerva 10 catheter, and the catheter is the active --11 you know, is the therapeutic part of the 12 product, and the dNerva catheter is used by 13 an interventional pulmonologist. The 14 interventional pulmonologist takes the 15 dNerva catheter, and he puts it through the 16 working channel of a flexible bronchoscope, 17 you know, and flexible bronchoscopes are 18 something that interventional pulmonologists 19 have used for years. 20 It's still -- it's a flexible 21 catheter that goes down -- you know, in 22 through your mouth, down the trachea, and 23 they can look around inside the lungs with 24 this, but our catheter goes through the 25 working channel inside that bronchoscope,

		Page 16
1	and when when the interventional	
2	pulmonologist puts it down, he can position	
3	it in both the right mainstem bronchus first	
4	and then the left mainstem bronchus. You	
5	can actually do it in either sequence.	
6	That could be the working end of	
7	the catheter has an electrode on it, which	
8	is used to deliver the energy, and when that	
9	electrode is positioned correctly inside the	
10	right or left main bronchus, the energy can	
11	be turned on, so that it delivers thermal	
12	energy to the wall of the the main	
13	right the right and left mainstem	
14	bronchus that can denature the nerves that	
15	go to the lung permanently, so that those	
16	nerves are interrupted.	
17	And what's great about that is	
18	those nerves are what if you if you	
19	interrupt those nerves, it allows the	
20	airways to dilate, open.	
21	Q. Let's just back up for a second.	
22	You you referred to something	
23	called a bronchus?	
24	A. Yes.	
25	Q. What is the bronchus?	

		Page 17
1	A. Anatomically, your main airway. It comes	
2	from your vocal cords. It's called the	
3	down to its first branch point is the	
4	trachea, and that's the big airway. You can	
5	feel it, you know, right right in your	
6	throat.	
7	When that comes when that gets	
8	down into the middle of the chest, it	
9	branches into two main two large	
10	branches, and those are call the right and	
11	left mainstem bronchus, and then the	
12	mainstem bronchus, in turn, branch into	
13	multiple other airways, and then they keep	
14	subdividing into and goes down into all	
15	of the little billions of airways, you know,	
16	out in the lungs.	
17	Q. Okay. So, the the bronchus the	
18	mainstem bronchus is outside of the lungs?	
19	A. Yes, you're not technically in the lungs	
20	yet.	
21	Q. Okay. And then the bronchus stems out from	
22	the mainstem bronchus and goes into the lung	
23	fields?	
24	A. Yeah, it goes it goes basically, you	
25	have the mainstem bronchus, and then you	

		Page 18
1	have secondary bronchi and then tertiary.	
2	You know, it's just dividing and dividing	
3	and dividing.	
4	Q. And describe for me, again, where the	
5	where within in the body the dNerva catheter	
6	is used?	
7	A. In the right and left mainstem bronchus, in	
8	just those first major divisions.	
9	Q. Okay.	
10	A. It never goes down into the lung fields.	
11	Q. And the what what condition is Holaira	
12	seeking approval from the FDA to treat with	
13	this device?	
14	A. Well, COPD, Chronic Obstructive Pulmonary	
15	Disease, is the disease process, and in	
16	patients that have COPD, COPD is	
17	characterized by overactive nerves, you	
18	know, that that are causing and these	
19	overactive nerves cause the airways to be	
20	constricted, you know, kind of in spasms, so	
21	to speak, and up until this point in time,	
22	the way COPD patients have been treated are	
23	with inhalers.	
24	And, of course, you see this on	
25	television all the time. Spiriva is the	
I		

		Page 19
1	leading selling pulmonary drug in the world,	
2	maybe the first or second leading selling	
3	drug of any kind in the world. You know,	
4	the inhaler that you see people who can't	
5	breathe puff on.	
6	And what that the way that	
7	inhaler works, it goes down, and it	
8	literally is trying to block the nerves, you	
9	know, that go to the lungs so the airways	
10	can open up. What we're trying to do, we're	
11	going in, and we're by using this	
12	RF energy and the right and left mainstem	
13	bronchus, we're trying to ablate those	
14	nerves, so that we so that we can	
15	permanently get a permanent dilation, so	
16	that you have a permanent bronchodilation.	
17	So, it would become an alternative therapy	
18	to drugs or even an additive, where we	
19	actually know it would be an additive to	
20	drugs, and there's a reason for that, to	
21	benefit.	
22	Q. Let's talk about the a little bit more	
23	about the medical procedure in which the	
24	Holaira Lung Denervation System is used.	
25	You mentioned a name for the	

		Page 20
1	medical procedure itself. What was that	
2	again?	
3	A. Targeted lung denervation.	
4	Q. Okay. And where is targeted lung	
5	denervation performed? Like in what kind of	
6	setting?	
7	A. It's in a hospital, a pulmonology procedure	
8	room. It's in a special room that where	
9	hospitals do these bronchoscopies	
10	procedures.	
11	Q. What who performs the procedure?	
12	A. An interventional pulmonologist.	
13	Q. What's an interventional pulmonologist?	
14	A. Well, it goes it kind of goes back to the	
15	same thing about when I talked about	
16	interventional cardiologist.	
17	Until recently, until literally a	
18	couple years ago, the the highest level	
19	of certification within the field of	
20	pulmonary was a Board-certified	
21	pulmonologist, and these were doctors that	
22	did bronchoscopies, you know, just that were	
23	diagnostic, you would go and look around to	
24	see what was in the lungs.	
25	But in the last over the last	

		Page 21
1	number of few years, similar to what had	
2	happened 15 or 20 years ago in cardiology, a	
3	new field has arisen of interventional	
4	pulmonology, where pulmonologists can do	
5	additional training to become skilled at	
6	actually doing invasive procedures, and this	
7	group are what we refer to as the	
8	interventional pulmonologists, and to be	
9	and that is a fully now recognized Board	
10	certification-required subspecialty of	
11	pulmonology, where they literally have to do	
12	a two-year fellowship after training all the	
13	previous stuff, do two additional years of	
14	interventional pulmonology and then pass the	
15	Boards to be a card-carrying credentialed	
16	interventional pulmonologist, and they	
17	they do everything well, I shouldn't say	
18	they do everything.	
19	They do an awful lot. They do a	
20	lot of different procedures now just through	
21	the bronchoscope that used to require	
22	open-chest surgery. You know, the same	
23	story again like what happened 20 years ago	
24	in cardiology, and they'll do everything	
25	from putting in stents to dilating blocked	

		Page 22
1	airways to resecting tumors to, you know,	
2	removing foreign bodies, just lots of	
3	things.	
4	So, we as a our procedure,	
5	targeted lung denervation, is one of an	
6	array of things that they do.	
7	Q. You mentioned that how many of roughly	
8	how many interventional pulmonologists are	
9	there in the United States, if you know?	
10	A. Today, there are about 150 roughly, about	
11	150. So, you can kind of think of it as	
12	each state if all states were average	
13	size, there would be two or three in a	
14	state.	
15	It will grow. You know, the the	
16	fellowship programs that train them are	
17	turning out about, you know, seven or eight	
18	new ones a year, you know, in the US, you	
19	know, the specialized places that are	
20	formally training them. So, that number	
21	will I expect will slowly grow.	
22	Q. Okay. Let's discuss a little bit how the	
23	company changed names from IPS to Holaira,	
24	and to assist with the the discussion,	
25	I'll mark and hand you an exhibit.	

		Page 23
1	A. Sure.	
2	(Exhibit Number 1 was marked.)	
3	BY MR. HANSEN:	
4	Q. Dr. Wahr, you've been handed what's been	
5	marked as Wahr Exhibit 1.	
6	Do you recognize this document?	
7	A. Yes.	
8	Q. What is it?	
9	A. This is these are documents that we put	
10	together not long after I took over as CEO	
11	to help guide, you know, our renaming	
12	process, you know, and also, you know, some	
13	Board presentations that where we	
14	actually conveyed some of this information	
15	to our Board of Directors	
16	Q. Okay.	
17	A about why we were doing it.	
18	Q. And was this a presentation present to the	
19	Holaira Board of Directors?	
20	A. Yes, this first one here, the open session	
21	of the Board meeting. I mean, this was part	
22	of the Board meeting where you know,	
23	Board meetings have generally two parts.	
24	They have what's called an open	
25	session, where key company executives are	

		Page 24
1	included; and then there's what's called a	
2	closed, where it's just me with the Board of	
3	Directors period. You know, that's the part	
4	where you talk about things like	
5	compensation and confidential stuff that you	
6	wouldn't want to have other people sitting	
7	in on.	
8	Q. During the	
9	A. Open session.	
10	Q open session, if you'd flip to page	
11	the twelfth slide in, which is has the	
12	Bates number on the bottom right,	
13	Holaira 627?	
14	A. Yep.	
15	Q. There is a appears to be a discussion	
16	about branding activities?	
17	A. Yep yes.	
18	Q. What was the purpose of this the	
19	inclusion of this slide in the presentation?	
20	A. Well, I was I introduced it as you	
21	noticed on the first page, the company was	
22	still called Innovative Pulmonary Solutions	
23	at this time, but I wanted to and I	
24	this this was really my first Board	
25	meeting, you know, because I was hired in	

Page 25 September, and this was December, and so, 1 2 this was my very first Board meeting that I 3 led, and I had already decided by that point 4 that I wanted to change the name of the 5 company, and this was my starting to 6 socialize that concept to the Board. 7 Now, you have to realize this was a 8 Board of Directors that had been with this 9 company for four years, you know, and so, 10 they were pretty -- you know, they were very 11 familiarized with the previous name, and so, 12 I just didn't want to come in and say I'm 13 changing, so how I'll commonly do things is 14 I'll introduce something and socialize it 15 and then -- then come back with a 16 recommendation at the next Board meeting. 17 It's a good way to run a company, 18 by the way, if you ever do this. Don't 19 blind-side your Board with just radical 20 stuff in the cold. 21 So, this was socializing the 22 concept that I was working my way towards 23 rebranding the company, which is a way of 24 saying, we're going to change the name, 25 we're going to change the Website. You

		Page 26
1	know, we're going to you know, our	
2	materials that are shown publicly, you know,	
3	we're going to rethink.	
4	Q. Why did you want to move away from the IPS	
5	name?	
6	A. Well, this was my third time around the	
7	track, you know, with a company, and so,	
8	while I don't consider myself a marketing	
9	person, I'm used to working with marketing	
10	people, and I do believe what they say.	
11	And, to me, there were a couple	
12	there was a few problems with Innovative	
13	Pulmonary Solutions.	
14	Q. What were those problems?	
15	A. Well, one is is that marketing people	
16	will tell you that they really they would	
17	never recommend the name of a company that	
18	goes much more than two or three syllables.	
19	Innovative Pulmonary Solution had 11. It's	
20	too many words, you know, to be efficient,	
21	you know.	
22	And the second thing is is that it	
23	was so long that you couldn't even fit it	
24	into some URL boxes. You know, when you go	
25	to type in your emails and stuff, it	

		Page 27
1	wouldn't fit, and, you know, you'd run out	
2	of space, and then you were just stuck on a	
3	lot of forms. I found that particularly	
4	irritating.	
5	The third thing was it was just	
6	kind of a sentence. You know, it wasn't	
7	really a unique word. Marketing people and	
8	branding people want you to create your own	
9	unique word. Because it wouldn't fit into	
10	URL addresses, the company started calling	
11	itself IPS for short, which is a	
12	three-letter acronym, but the problem with	
13	IPS was, one thing, marketing people don't	
14	like acronyms, but, number two, it was	
15	already trademark. I mean, in fact, it's	
16	trademarked by about 15 people worldwide for	
17	all kinds of different things. There's	
18	absolutely nothing unique about IPS, you	
19	know, as a three-letter thing thing out	
20	there.	
21	So so, for all of those reasons,	
22	I felt we needed and since the company	
23	I had just become the new CEO, part of	
24	becoming the new CEO was we were going to	
25	move the company we decided we'd move the	е

		Page 28
1	company from Seattle, where it had been the	-
2	first four years, to Minneapolis.	
3	So, we were moving the company, and	
4	it's going to be a new entity, you know,	
5	here in Minneapolis, of which the people in	
6	Minneapolis didn't even know you know,	
7	there was no memory of the old name. So, it	
8	was the perfect time to change the name.	
9	Q. On the on slide 12, the third bullet	
10	point down says: Need image that	
11	demonstrates we are different from	
12	competition, relevant to the target	
13	audiences and credible.	
14	Do you see that?	
15	A. Yep.	
16	Q. What was meant by "demonstrates we are	
17	different from competition"?	
18	A. This is a Class 3 device, first time and	
19	it's very novel, first time anything like	
20	this has ever been done in humans. You want	
21	a name that is not confused with anything	
22	else, you know, that is totally unique, that	
23	will a new word a new word, you know,	
24	created that will become the image of your	
25	product, you know, that no physician will	

		Page 29
1	ever find confusing.	
2	You know, that's fundamental	
3	that's what's fundamental. You don't you	
4	know, when the Google people decided to have	
5	a a search engine that you could find	
6	anything on the Internet in 100th of a	
7	second, they wanted a word that nobody had	
8	seen before, and that's they created the	
9	word "Google," which now everybody thinks	
10	has been around for a century, when, in	
11	fact, it's only been around for ten years,	
12	because it was brand new. That's what	
13	you're trying to do.	
14	Q. After this Board meeting, did the did the	
15	IPS continue in the process of rebranding?	
16	A. Yes, the Board when I introduced this,	
17	the Board gave me they said, yes, we're	
18	interested in having this done, go do it.	
19	Q. And what did Holaira, or IPS at the time,	
20	retain any third-party entities to assist in	
21	that process?	
22	A. Yep, it's on here. You know, I had already	
23	started the process, you know, with a	
24	marketing consultant named Lorraine Wright	
25	on the slide, and Lorraine, in turn, was	

		Page 30
1	working with a marketing company called	
2	Six Degrees.	
3	Q. Okay.	
4	A. Lorraine is not an employee of Six Degrees.	
5	They are two different things. So, Lorraine	
6	is our marketing person basically.	
7	MR. HANSEN: Let's mark that	
8	exhibit.	
9	(Exhibit Number 2 was marked.)	
10	BY MR. HANSEN:	
11	Q. Before we get into this next exhibit,	
12	Dr. Wahr, you mentioned that Lorraine Wright	
13	is not an employee?	
14	A. Right.	
15	Q. Although she's not an employee, is she	
16	treated like as if she's an employee with	
17	respect to her job function?	
18	A. Yes, she's our she's our only marketing	
19	person we have. She does 100 percent of our	
20	marketing activities, which, because we're	
21	still a pre-revenue company, clinical stage,	
22	as I call it, we don't really have a need	
23	yet for a full-time marketing executive.	
24	So so, that's why she's still at	
25	consultant status. I would estimate she	

		Page 31
1	probably spends about 50 percent of her time	
2	working with us, but she has some other	
3	clients, but she's our sole person, and she	
4	carries a Holaira business card, has a	
5	Holaira has a Holaira email address, and	
6	she she is our she functions as if	
7	she's a full-time employee. All	
8	marketing-type questions, you know, that	
9	flow through or inquiries from the	
10	Website flow through her.	
11	Q. Let's turn to Exhibit 2.	
12	A. Okay.	
13	Q. Have you seen Exhibit 2 before, Dr. Wahr?	
14	A. Yes.	
15	Q. What is Exhibit 2?	
16	A. These are the materials that were put	
17	together by Six Degrees working with	
18	Lorraine Wright that were literally the	
19	the documents we worked off of in our	
20	company meetings as we started through a	
21	methodical process of of considering	
22	various alternatives for renaming the	
23	company.	
24	Q. If you turn to the third slide in, which is	
25	Bates number Holaira 48, there's a slide	

Page 32 entitled: Naming Considerations? 1 A. Yes. 2 3 Q. The first bullet point says: The new name 4 must be shorter, simpler, fewer syllables. What is that in reference to? 5 6 A. That's in reference to our previous name of 7 Innovative Pulmonary Solutions that had 11 8 syllables. 9 Q. Okay. If you turn to Holaira 50, which is 10 another couple of slides in, it's entitled: 11 Metrics for Naming? 12 A. Yep. 13 Q. Can you describe what the purpose of this 14 slide is? 15 A. Yes, this is a -- this was a slide that 16 Six Degrees put together. I would say that 17 it's pretty much a boilerplate that 18 marketing firms use for how you -- you know, 19 it was not unique to us. It was unique to 20 what they do every time regardless of the 21 client, in terms of, when you start through, 22 how do you invent a new name or new word. 23 By the way, this is kind of -- I 24 found this -- found this fascinating when I 25 got into this. There is no word in

Page 33 Webster's Dictionary that's not trademarked. 1 2 So, you can't name the company anything of a 3 word that exists. There -- whatever the 4 thousands of words, they're all trademarked. 5 So, the only way you can create a 6 new trademark is to come up with a brand new word. Isn't that amazing? There are more 7 8 trademarks, in fact, than there are words in 9 the dictionary. So, you have to -- I 10 thought that was pretty -- pretty amazing, 11 you know, which is why you've got to get 12 creative people to do this stuff. 13 Now -- now, but these things here 14 are -- are what they say are -- are the 15 different categories of how you think about 16 it, you know, as you go about it as a team, 17 you know, association, different, clear, 18 pronounceable, memorable --19 (Reporter clarification.) 20 THE WITNESS: The categories were 21 product association, different, clear, 22 pronounceable, memorable, positive and available. All the categories that you 23 24 needed to -- you had to be able to have all 25 of these apply at the end of the day.

Page 34 BY MR. HANSEN: 1 2 Q. And we may have discussed this already, but 3 why was it important -- why was it an 4 important metric for the name to be 5 different from the competition? 6 A. Because we had -- we have a novel, first-in-the-world-ever-done product. We 7 8 want -- we wanted no confusion that this had 9 any similarity to anything else. It had to 10 be totally unique, the word, to imply the 11 fact that this also was a totally unique 12 product. 13 Q. If you turn to the slide just before the one 14 that we're on, there's an identification of 15 a number of products that treat pulmonary 16 conditions, correct? 17 A. Yes. 18 Q. Why were you considering these other 19 entities and names in this process? 20 A. Because we knew that these were names of 21 products that interventional cardiologists 22 were already familiar with and using, and we 23 wanted to make sure that ours was -- you 24 know, was not similar to any of them. I 25 mean, again, getting back to the different

		Page 35
1	and unique category.	
2	Q. I think you said interventional	
3	cardiologists	
4	A. Oh, did I say that?	
5	Q do you mean pulmonologists?	
6	A. I continue to do that, because I used to be	
7	one, but, yeah, interventional	
8	pulmonologists. Glad Marty isn't here.	
9	Q. If you turn to slide Holaira 56, it's	
10	entitled: Naming Categories?	
11	A. Yeah yes.	
12	Q. Can you describe for me what what this	
13	slide reflects and what these naming	
14	categories mean?	
15	A. Well, the way the marketing team helps	
16	stimulate growth I mean, group-think is	
17	to provide categories, you know, of	
18	concepts, and they generally name, when	
19	they you know, in doing this, they come	
20	up with anatomic things or physiologic	
21	things or structures, you know, that are	
22	that have something to do with what you're	
23	doing, you know, and so, therefore, in terms	
24	of what we do, it's it's pretty easy for	
25	them to go nerve, air, pulmonary, lung,	

		Page 36
1	respiration, open you know, "open"	
2	meaning open airway.	
3	So and then they and then you	
4	take each of those one by one and start to	
5	create words that might be related or convey	
6	or be related to these general categories.	
7	Q. So, for example, air-centric?	
8	A. Yes.	
9	Q. What what impact does a word being	
10	air-centric have on the word itself?	
11	A. Well, I mean, each of these would would	
12	commonly you know, would you work	
13	around that. You start with that concept	
14	of, say, air, and then you work around it	
15	and try to mold words, you know, that might	
16	encompass it.	
17	Q. Okay. And why if you know, why were	
18	these specific categories identified as	
19	potential categories for words?	
20	A. Because they related they all had	
21	something to do with our procedure, you	
22	know, what we do.	
23	Q. If you turn we're going to jump around	
24	just a little bit, but if you turn to the	
25	third from last page of the slide deck,	

	Page 37
1	which is Holaira 111, there's a short list
2	of names.
3	Were there more names considered
4	than just this this short list?
5	A. Oh, yes, yeah, yeah. I mean, there were
6	yeah, there were many, and in all of those
7	categories, there were a lot in each
8	category.
9	What these what these marketing
10	people do, they sit down and and they
11	provide you with a list to stimulate, you
12	know, all various renditions within these
13	categories.
14	Q. What what process was used to take the
15	longer list and winnow it down to the
16	shorter list?
17	A. We had we had a group meeting, where we
18	had there were really there were
19	really, you know, a smaller group of people,
20	four or five people, that that put the
21	most time into this.
22	It was myself; it was Marty Mayse;
23	it was Steve Dimmer, the other founder;
24	Lorraine Wright, we probably put in
25	relatively more time in discussion, but

	Page 38
1	there was also a larger group of some of the
2	other employees in the company that were
3	also brought in to comment on on just gut
4	reaction, you know you know, what kinds
5	of things that started to shake out as
6	people's favorites.
7	Q. Let's flip back in the slide deck to
8	Holaira 65, which is an air-centric name,
9	and the name is Holaira?
10	A. Yep.
11	Q. Ultimately, this is the name that the
12	company selected, right?
13	A. Yes.
14	Q. Why did the company select the name Holaira?
15	A. The there were there were several
16	reasons that this one, as more and more
17	discussion went, rose to the top, and the
18	one that I liked the best was that the
19	fundamental reason why I think our product
20	is going to be so exciting in the
21	marketplace is because the current standard
22	of care for this disease is are these
23	inhalers, these drugs, you know, that people
24	breathe breathe in, but what's known
25	by both all physicians know this, and the

		Page 39
1	pharmaceutical companies themselves	
2	acknowledge it, is that the Achilles heel of	
3	drugs that they don't talk about for	
4	treating lung disease is that, when they	
5	breathe these drugs in and they can only	
6	be given by by inhalation. They can't be	
7	given by swallowing pills, and there's	
8	reasons for that pharmacologically, but the	
9	drugs will go preferentially into those	
10	small airways that are wide open, and they	
11	won't go to the ones that are blocked, the	
12	drugs.	
13	So, the drugs, it's estimated,	
14	achieve only maybe at best 50 percent of the	
15	potential benefit that could be had if you	
16	had a way to get get you know, get, in	
17	effect, in all of the airways, not just the	
18	open ones, but that's also not really known	
19	for sure. People debate that.	
20	Some people say it's less even, you	
21	know, but so, drug therapy is really only	
22	treating part of the lung, you know, when	
23	these when it goes in, but it's still	
24	better than nothing.	
25	Our real benefit of our therapy by	

		Page 40
1	going in and denervating the nerves in the	
2	right and left mainstem bronchus, and 100	
3	percent of all the nerves that go to the	
4	lungs go in are in the walls of that	
5	right and left mainstem bronchus. By	
6	denervating, we could dilate all the	
7	airways, the whole thing, the whole lung,	
8	and so, I love the concept that we'll be the	
9	first company that can truly deliver therapy	
10	to the whole lung, you know, and so and,	
11	whereas, I would say pharmaceuticals deliver	
12	therapy to only part of the lung. We're the	
13	whole lung.	
14	And so, the whole focus here was on	
15	whole, you know, W-H-O-L-E, but the	
16	marketing people, being the clever way they	
17	are, said, let's spell it H-O-L, because	
18	it's pronounced exactly the same way and	
19	it's clever. Now, you're looking like a	
20	unique word, as opposed to W-H-O-L-E, which	
21	is a word that everybody recognizes.	
22	So, shorten it to Hol, H-O-L. So	
23	air to the whole lung, and that really	
24	started to resonate to people as really a	
25	a cool thing.	

Page 41 1 The second thing was that -- was 2 that, as the people started doing reviews, 3 there's very, very few things in all of 4 medicine, you know, whether it's drugs or 5 procedures or -- or words or anything that begin with the letter H. H is really rare. 6 7 So, it was extremely unique, and the other 8 thing is is that we also found out the word 9 holo, H-O-L-O, is actually another word that 10 you can find out there, and actually its 11 derivation is also whole, you know, 12 actually. So, if you drop the W in -- you 13 know, in languages, H-O-L-O, also means 14 whole. So, it really came through that it 15 was air to the whole lung and -- and really 16 unique. 17 The one thing that -- that I had a 18 little hesitation about, which actually also 19 makes it -- made it really unique, but was 20 that we struggled with, and when we tested 21 this around with different people, people 22 had -- when they said, what do you think 23 when you see this word? Well, you know, 24 there's a derogatory street slang term 25 called ho, you know, like that person's a

		Page 42
1	ho.	
2	Anyway, but that is a negative	
3	term, and and so, we struggled with the	
4	fact that it would have too strong, you	
5	know, a differential, you know, in terms of	
6	a word being thrown into into medicine,	
7	and so but the marketing people actually	
8	kind of liked that, because it gave it more	
9	of an edge, you know, of uniqueness. And,	
10	by the way, nobody really thinks that, you	
11	know, as our testing they really see	
12	"whole," you know, is where they go.	
13	Q. Can you describe for me how the company	
14	pronounces its name?	
15	A. Yeah, it's Hol, H-O-L, hyphen, second	
16	syllable, is air, A-I-R, and the last	
17	syllable is A. Three syllable, where it's	
18	H-O-L, then second syllable A-I-R, another	
19	syllable A, and we really differentiated	
20	we really wanted that differentiated all the	
21	way to the point that on the that, on the	
22	logo, we put an umbrella of dots over the	
23	word A-I-R to differentiate the word "air"	
24	and separate it from the syllable H-O-L, so	
25	there was no no to really call that	

		Page 43
1	out, to get the word Hol on there, H-O-L,	
2	and you've seen the it's on the business	
3	cards. You've seen the logo.	
4	Q. Going back to the the short list of of	
5	names, there were at the back of the	
6	slide deck, there are a number of names that	
7	Holaira ultimately did not go with.	
8	A. What page?	
9	Q. 111?	
10	A. Oh, 111.	
11	Q. Yep. For example well, first, let me ask	
12	you this: There are a number of names that	
13	have Xs in the different columns.	
14	A. Yeah.	
15	Q. Would we take that to mean that the names	
16	with Xs are in the running or out of the	
17	running?	
18	A. In the running.	
19	Q. Why didn't Holaira end up using the name	
20	Vitaira?	
21	A. Well, you know, there were people that liked	
22	Vitaira in the group, but but one of the	
23	things that that became a differentiator	
24	on that one was that, for whatever reason,	
25	and these things tend to go in trends, but	

	Page 44
1	if you look at the last four or five years
2	of medical device company names, there have
3	been a lot of Vs. There's a lot of
4	companies out there that start with V, and
5	so, for that reason, that was a
6	discriminating that was probably one of
7	the main reasons why we moved away from that
8	at the end of the day. In discussion, in
9	fact, my first company had begun with a V,
10	Velocimed, and that was a bias to me. I
11	didn't want to do another V company.
12	Q. And why didn't you select Apaira?
13	A. Again, I think that it was a there are A
14	companies out there, and we thought that
15	we thought that there was another company
16	out there called Alero, you know, that we
17	thought that looked a little close to, so we
18	thought Apaira was close to some other
19	competitors.
20	Q. And when you say "Alero," are you talking
21	about the product sold by Boston Scientific?
22	A. No.
23	Q. What
24	A. It's a pharma it's a pharma drug.
25	Q. And how do you spell that?

		Page 45
1	A. A-L-E-R-O, I think is the name of it is	
2	how it's spelled.	
3	Q. Ultimately, you went with one of the	
4	air-centric names, Holaira?	
5	A. Yes.	
6	Q. Why did you go with an air-centric name?	
7	A. It was a category people liked the best. I	
8	mean, it is the fundamental basis of what we	
9	do is to improve airflow to the lung. I	
10	mean, it's it's the closest.	
11	Q. Were you aware of any other company name,	
12	product names or trademarks, that had the	
13	word air within it when you made the	
14	decision to go with an air-centric name?	
15	A. Yes, there's a lot there's a lot of	
16	"airs" out there.	
17	Q. When you say "there's a lot of airs out	
18	there," what do you mean?	
19	A. I mean, there's a lot of companies I	
20	mean, there's a lot of products out there	
21	where the syllable A-I-R is a part of the	
22	name.	
23	Q. And what what field are those products?	
24	MR. WALZ: Objection, foundation.	
25	BY MR. HANSEN:	

		Page 46
1	Q. Do you know you mentioned that there's a	
2	lot of words out there with "air" in it?	
3	A. Yes.	
4	MR. WALZ: Objection, foundation.	
5	MR. HANSEN: To what?	
6	MR. WALZ: How does he know that	
7	there are a lot of products out there that	
8	have "air" in it? You can lay the	
9	foundation. I don't know how he knows that.	
10	MR. HANSEN: He just testified that	
11	he knows it.	
12	MR. WALZ: How do you know it?	
13	BY MR. HANSEN:	
14	Q. Okay. Dr	
15	A. I've seen them a pulmonary meetings and	
16	generally follow the literature.	
17	Q. Okay. So, you work at a company that has a	
18	product is developing a product in the	
19	pulmonary space, correct?	
20	A. Yes.	
21	Q. And through going to meetings in the	
22	pulmonary space, you're aware of other	
23	company names?	
24	A. And product names, yeah yes.	
25	Q. And is that how you're aware of other	

		Page 47
1	A. Yes.	
2	Q names using the word "air"?	
3	A. Yes.	
4	Q. And are those other product names that are	
5	in your mind in the pulmonary space?	
6	A. Yes.	
7	Q. Can you recall any of them?	
8	A. Xolair.	
9	Q. What does Xolair do?	
10	A. It's a drug.	
11	Q. What are you aware of the term "Alair"?	
12	A. Yes.	
13	Q. Sold by Boston Scientific?	
14	A. Yes.	
15	Q. Why what consideration, if any, did you	
16	take of that name when deciding to choose	
17	the name Holaira?	
18	A. Say that again.	
19	MR. WALZ: If I could, you took a	
20	piece of paper out of your coat pocket, and	
21	you now seem to be referring to it.	
22	THE WITNESS: Yes, there's I	
23	have four names of companies with "air" in	
24	it that I think are really good examples.	
25	MR. WALZ: Okay. That's fine. You	

		Page 48
1	can use it.	
2	THE WITNESS: Okay.	
3	BY MR. HANSEN:	
4	Q. Dr. Wahr, what what examples are on that	
5	piece of paper?	
6	A. Well, there's Singulair, Xolair, VitalAire	
7	and Alere, A-L-E-R-E.	
8	Q. Turning back to my question about Alair, the	
9	product sold by Boston Scientific, what	
10	consideration, if any, did you take of the	
11	existence of that name when deciding to use	
12	the name Holaira?	
13	A. We wanted to make sure that we were very	
14	different from any other word, and I would	
15	say that that fell into that category. You	
16	know, we were we as you saw in the	
17	previous slide, we got the list of the other	
18	leading or I shouldn't say leading, but	
19	the known products that are used by	
20	interventional pulmonologists, and so, we	
21	looked at that entire list and said, are we	
22	different than all of these words, you know,	
23	and we were we were confident we were	
24	different from all of these words, because	
25	nobody had anything that looked like Hol,	

		Page 49
1	H-O-L, at the beginning of the word.	
2	Q. What why did you want to be different	
3	from Alair?	
4	A. Because eventually because we have a	
5	unique product, and we want our our	
6	physicians, who are our main customers,	
7	to to have no confusion about what we are	
8	doing.	
9	Q. Let's turn to the the development of the	
10	Holaira products.	
11	I understand, and certainly tell me	
12	if I'm wrong, I understand that the Holaira	
13	product is not commercially available in the	
14	United States?	
15	A. It's a clinical stage company.	
16	Q. When you say "it's a clinical stage	
17	company," what do you mean?	
18	A. It's not approved for use, you know, for	
19	commercial sale.	
20	Q. And what what process is the company	
21	undertaking to become approved for	
22	commercial sale?	
23	A. We're doing a we're working through	
24	clinical trials, you know, human clinical	
25	trials, and the the process that that	

		Page 50
1	we're doing is we're doing a three	
2	three-stage development program, which has	
3	began with Phase 1 clinical trials. We	
4	finished that.	
5	We're in what are now called	
6	Phase 2 clinical trials, and then if our	
7	data looks good in the Phase 2 trials, we'll	
8	move on to what's called Phase 3 clinical	
9	trials, which would be the pivotal trial.	
10	We're in the middle of Phase 2 right now.	
11	Q. Why is the company undertaking that process?	
12	A. Well, the product is because the product	
13	is novel and has never been done before, you	
14	need to be very careful, you know, as you	
15	work your way through the development	
16	process, that you make sure that that	
17	your product is safe, first of all, and the	
18	way that's done in the eyes of the	
19	regulatory authorities is they will approve	
20	you to treat a small number of patients.	
21	You treat those patients in the	
22	Phase 1 trial, and then if that looks good,	
23	then they'll give you a larger number of	
24	patients you can treat, which is basically	
25	Phase 2 trials. If that data looks good,	
i		

		Page 51
1	and basically Phase 1 and Phase 1 trials	
2	are really focused on safety. You know,	
3	they the way this works, they first want	
4	to know that you're not going to hurt	
5	anybody, and then if they if you pass	
6	that bar, then you move on to where your	
7	trials will be big enough that you can start	
8	to, in followup testing, show that you're	
9	actually beneficial, you know, but safety	
10	comes first, and then you move on to the	
11	benefit part.	
12	So, Phase 2 kind of attempts to	
13	re-corroborate the safety issue of Phase 1	
14	in a large enough pool of patients that you	
15	might be able to start to get a signal to	
16	understand your your efficacy of a mark.	
17	The other thing the other part about	
18	Phase 2 trials is that you also are allowed	
19	to start exploring some other parameters,	
20	such as dose and, you know, some other	
21	variables about your product.	
22	Q. You mentioned	
23	A. But when you get to Phase 3 when you get	
24	to Phase 3, you need to have your final	
25	procedure and your energy dose and	

Page 52 everything has to be defined and done, and 1 2 then that's it, and that would be the trial 3 in which eventual approvals are based is 4 Phase 3. 5 Q. You mentioned earlier that there are three 6 classes of products within the FDA? A. Right. 7 8 Q. What class of product is the Holaira System? 9 A. It's Class 3, and generally Class 3 products 10 are the products where you would go through 11 this type of extensive clinical testing 12 program. 13 Class 1 products, for example, may 14 not need any clinical testing at all. I 15 mean, they could literally just -- in 16 humans, they could just be developed on a 17 benchtop somewhere and get approval. 18 Generally, Class 2 products are 19 somewhere in between. Generally, they 20 require a -- some human testing in a trial, 21 but for sure Class 3 products require, you 22 know, an extensive development program since 23 it's never been done before, and you've 24 really got to prove that safety thing 25 before -- before they're going to let it go

Page 53 out on the market. 1 2 Q. What indication is being sought for the 3 Holaira products? 4 A. Patients of -- patients with moderate to 5 severe COPD. Q. Let's turn now, Dr. Wahr, to the use of the 6 name Holaira. 7 8 When did -- when did the name 9 Holaira start being used by the company, if 10 you recall? 11 A. Probably in the first quarter, first quarter of 2013. We -- yeah, plus or minus a month 12 13 or two, somewhere in there. 14 Q. And how is the -- how is the Holaira name --15 how is the Holaira name used? 16 A. We use it -- I mean, it's the name of the 17 company. It's on the building. It's --18 it's on our business cards. It's the name 19 on our Website, and it's -- and it's the 20 name on -- you know, on the product. 21 You know, I mean, it's the Holaira 22 Lung Denervation System. It's on the 23 console, and it's -- we use it on our slide 24 template -- our PowerPoint slide template 25 that we use when we present abstracts and

	Page 54
1	our scientific data. I mean, it's the name
2	of it's the name of the system and the
3	name of the company, so it's on that stuff.
4	Q. At what events, if any, has Holaira
5	presented to physicians?
6	A. Publicly, public presentations of our
7	company to date has only happened one time,
8	and that was our coming-out party for
9	public presentation was at the European
10	Respiratory Society meeting in Munich,
11	Germany last fall.
12	That's the only public
13	presentation, you know, at a at a trade
14	show, and we did not have a booth. It
15	was we were start of the scientific
16	agenda. We had abstracts that were accepted
17	for presentation, and we did one evening
18	symposium, you know, where we summarized our
19	product for the you know, for the
20	attendees.
21	Q. And what were the attendees? Who was the
22	audience at that
23	A. Primarily interventional pulmonologists, as
24	well as, in general, pulmonologists. That
25	would that made up the majority of the

		Page 55
1	audience, and then there were industry	
2	people there as well.	
3	You know, whenever a new product is	
4	kind of like shown at one of these meetings,	
5	other companies that are in the space always	
6	come out of interest as well, as you would	
7	expect.	
8	Q. When I asked a few questions ago, you made a	
9	distinction, I think, between public and	
10	private presentations?	
11	A. Yes.	
12	Q. Has the company done any private	
13	presentations?	
14	A. Yes. Oh, yes. I mean, everybody you	
15	know, all of our physicians, who are	
16	investigators in our clinical trials, you	
17	know, obviously, have had private	
18	presentations, and not only private	
19	presentations, but have gone through	
20	training, extensive training, on how to use	
21	the device, and so, there's been meetings	
22	with that group of doctors, but we also have	
23	meetings with physicians in private that are	
24	other key opinion leaders, KOLs, that stands	
25	for key opinion leaders, leading physicians	

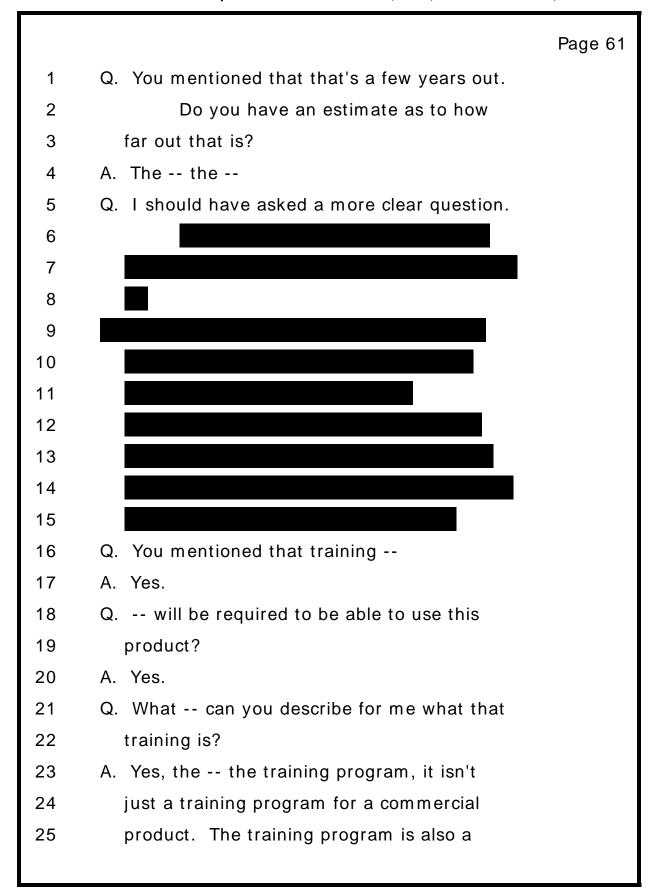
	Page 56
1	in the interventional pulmonary space, to
2	get their feedback and input and, you know,
3	reaction to what we're doing.
4	So there's been a number of those
5	meetings as well.
6	Q. And in those meetings you use the name
7	Holaira?
8	A. Yes.
9	Q. Approximately how many private presentations
10	would you say that Holaira has had?
11	A. Over since I have been CEO, those types
12	of meetings, fairly formal meetings, I would
13	say at least 50.
14	Q. And are those to interventional
15	pulmonologists in the United States or
16	elsewhere?
17	A. Both Europe and the United States.
18	Q. And within the United States, how many of
19	those types of meetings have you had?
20	A. Probably about a third of them have been
21	with US docs; two-thirds of them with
22	European physicians.
23	Q. Has
24	A. Our US our US we have no US clinical
25	sites yet. You know, we're hopeful we'll
ĺ	

		Page 57
1	have some later, you know, in the not too	
2	distant future.	
3	Q. Has Holaira used the name Holaira in any	
4	press releases?	
5	A. Yes.	
6	Q. Do you know about how many in the last, what	
7	is it, three and a half years?	
8	A. Since I have been CEO, there have been five	
9	press releases.	
10	Q. What's the general topic of those press	
11	releases, if you recall?	
12	A. The majority of the most of them were	
13	related to finance. It's common to do press	
14	releases after you raise money successfully,	
15	and or to announce, say, a key new	
16	employee hire, and then I think one of them	
17	was on you know, was announcing our	
18	clinical data that was going to be shown at	
19	the European Respiratory Society.	
20	Q. Has Holaira	
21	A. They're they're all posted on the	
22	Website.	
23	Q. Has Holaira clinical data been published in	
24	any medical journals?	
25	A. Yes. Yeah, our Phase 1 our first	

		Page 58
1	clinical trial now is published in a	
2	peer-reviewed journal called Thorax.	
3	Q. Has are you aware of any confusion	
4	between Holaira and Alair?	
5	A. None.	
6	Q. Are you aware of any confusion between or	
7	about Holaira's affiliation or lack of	
8	affiliation with Boston Scientific?	
9	A. None.	
10	Q. Let's turn now, Dr. Wahr, to the sales	
11	process for the Holaira product.	
12	First, who is the the target	
13	customer for the Holaira products?	
14	A. The interventional pulmonologists.	
15	Q. Why is that?	
16	A. Because our product will will be labeled	
17	that it is only for use by an interventional	
18	pulmonologist. That will be and then	
19	even if you are a Board-certified	
20	pulmonologist, just that by itself is not	
21	sufficient. You will also have to go	
22	through and finish the formal training	
23	program.	
24	Q. I'll dig into the formal training program in	
25	just a minute.	

Page 59 A. Okay. 1 2 Q. But you mentioned it will be labeled? A. Yeah. 3 4 Q. What -- what does that mean, "it will be 5 labeled"? 6 A. Well, the -- the -- when the FDA approves a 7 product, they -- they define in the label 8 who the patients are that -- what are the --9 what are the inclusion criteria that the 10 patient must have in order to be a candidate 11 for the therapy. 12 In our case, it would be moderate 13 to severe COPD, you know, and what the 14 testing parameters are that make that 15 patient formally eligible to get the 16 therapy; and, number two, what are -- what 17 are the requirements for a person to be --18 to use the device. 19 You know, what is the training 20 qualifications, you know, for a person to be 21 able to use the device. Those are defined 22 as part of a product being approved by the 23 FDA. Q. What -- what sales -- I understand the 24 25 product isn't commercially available as of

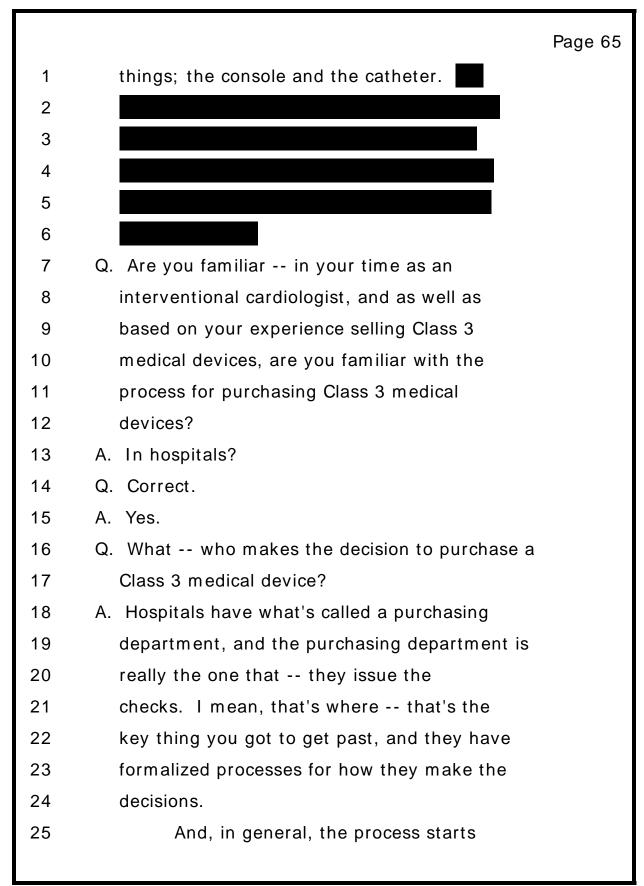
		Page 60
1	yet, but does the company have some sense as	
2	to what sales process it intends to employ	
3	when the product becomes commercially	
4	available?	
5	A. Yes. I mean, yes. I mean, we don't have a	
6	detailed plan, because that's out there in	
7	the future, you know, a number of years,	
8	but but at a high level, yes, and our	
9	plan for commercialization will be a direct	
10	sales force.	
11	Q. And what do you know by a direct sales	
12	force?	
13	A. Meaning	
14	Q. Can you describe that?	
15	A. Meaning we will not use distributors or	
16	other third-parties to to sell our	
17	product.	
18	Q. And how would the what's the concept of	
19	how the direct sales force would go about	
20	selling the product?	
21	A. It would be it would be direct from I	
22	mean, it would be direct to the	
23	interventional pulmonologists. It would be	
24	direct point-of-contact with the	
25	interventional pulmonologists.	



		Page 62
1	requirement even to just be doing our	
2	clinical trials at this point in time, you	
3	know, where we anybody who's going to be	
4	an investigator for us has to go through the	
5	formalized training program, which consists	
6	of both didactic, where it's slide	
7	presentations, you know, to instruct them in	
8	every aspect of how to use both the console	
9	and the device itself, you know, how to run	
10	them, how to position them.	
11	But there's also a you know, so,	
12	there's a mechanical part to it, but there's	
13	also an education about patient selection,	
14	you know, entry criteria, you know, for	
15	patients and also how the patients are	
16	followed up afterwards. So, it's a	
17	comprehensive, you know, all all parts of	
18	it.	
19	And in addition to the didactic	
20	presentations, there's also a hands-on	
21	training process, where where they use	
22	the device on a mannequin, as well as on a	
23	human cadaver, in a cadaver lab.	
24	Q. And who provides this training to	
25	physicians?	

Page 63 1 A. The company. We do, the company. You know, 2 our -- our technical team. 3 Q. Company employees? 4 A. Company employees, yeah. 5 Q. Is there any support provided by company 6 employees at actual patient cases? 7 A. Yes. After -- after completing the training 8 program, there is company support at all of 9 the clinical cases, 100 percent of them, and 10 when -- and we anticipate that that will go 11 on throughout the entire clinical program, and the term they use for this is 12 13 proctoring, you know, in the medical world; and there will be a requirement that comes 14 15 in at the time of approval by the FDA for 16 when the product goes commercial will be a 17 specific designation for how many cases 18 after completing the training program a 19 physician has to be proctored before he can 20 really be turned loose, you know, to just do 21 these cases in an unsupervised fashion. 22 And where that number is going to 23 be for the number of required proctored 24 cases, isn't settled yet. I mean we'll 25 learn more about that as -- as we go through

		Page 64
1	the whole clinical program, but I would	
2	expect it will probably be in the	
3	three-to-five-case range.	
4	Q. How how, if at all, are patients targeted	
5	for Holaira marketing?	
6	A. We don't do any any any marketing to	
7	patients, you know, at this point. Patients	
8	have the potential to become aware of us,	
9	you know, by finding you know, by	
10	discovering it, you know, by reading	
11	journals or going on the Website or things	
12	like that, but we don't actively do any	
13	marketing to patients.	
14	Q. What is the does the company have a sense	
15	as to what the price-point for the Holaira	
16	System will be once it's commercially	
17	available?	
18	A. Well, it will be there's two components	
19	to it. There would be the catheter, you	
20	know, the dNerva catheter, will have	
21	which is a disposable, one-time use, and	
22	will have one price; and then the console,	
23	which can be used repeatedly, you know, on	
24	many cases, will be another.	
25	So, there will be two purchased	



		Page 66
1	when a physician tells the purchasing	
2	department that there's a new product, or in	
3	some cases, the product's been around, but	
4	just hasn't been there on you know,	
5	available before, a physician makes a	
6	request that they would like to have a	
7	product, you know, put in the inventory or	
8	on the shelf, so to speak, at the hospital.	
9	And then when that happens, a	
10	process starts in the purchasing department,	
11	where where it's basically an application	
12	process where you have to educate the	
13	purchasing department about what it is, what	
14	its merits are, you know, what its potential	
15	benefits are, you know, to the patient.	
16	It's usually initiated by it can	
17	be initiated by any one of the physician,	
18	you know, specialties in the hospital.	
19	Generally purchasing departments then	
20	consider other things. They might they	
21	might ask for feedback from other	
22	specialties that would know about this.	
23	They they would they may look for	
24	medical society recommendations. They	
25	would they also would look very carefully	

		Page 67
1	about whether there's reimbursement	
2	available.	
3	Sometimes hospitals will decide	
4	this is a great product, but because no	
5	reimbursement is available from the	
6	insurance companies, they still won't put it	
7	on the shelf. You know you know, and	
8	that's when it sometimes comes into	
9	conflict, you know, hospital I mean,	
10	physicians versus hospitals that you	
11	know, if the physicians want it, and the	
12	hospital doesn't want to buy it, those are	
13	interesting discussions, but it's a pretty	
14	involved process.	
15	Q. And why does the direct sales force or	
16	why is the intent for the direct sales force	
17	at Holaira to work directly with	
18	interventional pulmonologists as opposed to	
19	the purchasing department?	
20	A. It's both a combination of the complexity of	
21	the product, plus the cost, and and	
22	that's too much to really rely on a	
23	distributor for.	
24	You know, distributors are	
25	really in my experience, do best with	

		Page 68
1	commodity-type products, you know, that	
2	don't require education. You know, like for	
3	example, if you had a there's 30	
4	different hip prostheses out on the market,	
5	and they're very and in many cases very	
6	hard to differentiate one from another. You	
7	know, a company might give a distributor,	
8	here's our hip prostheses, go out there and	
9	sell it, and because it's not a technical	
10	sale, and if but as products get more and	
11	more sophisticated, it's a you need your	
12	own highly, highly educated company	
13	representative to go in there and and	
14	educate you know, educate that physician,	
15	and then the hospital too.	
16	I mean, you know, the company reps	
17	get involved in the in the education part	
18	even working with the purchasing departments	
19	as well.	
20	Q. And what what role does the physician	
21	have in the decision to purchase the	
22	product?	
23	A. He is a he makes a recommendation, but	
24	his recommendation is essential to starting	
25	the process. I don't know of any situation	

		Page 69
1	where a hospital purchasing department would	
2	just, on their own, decide they want to put	
3	something on the shelf. That wouldn't	
4	happen.	
5	Q. With a Class 3 medical device, is it	
6	possible for a patient to purchase the	
7	product?	
8	A. No.	
9	Q. Why not?	
10	A. It can't be sold. It's not for sale to	
11	to patients. It's for sale only to to	
12	the hospital's purchasing department on the	
13	recommendation, you know, of the	
14	pulmonologist.	
15	Q. How would a patient who comes across the	
16	Holaira name, once the product's	
17	commercially available, how would that	
18	patient possibly get the treatment?	
19	A. They would have to they would have to	
20	identify a hospital and physician that	
21	that are approved to do the procedure and go	
22	to that medical center.	
23	MR. HANSEN: Why don't we go off	
24	the record. I'll go through my notes and	
25	see if I have any other questions for you,	

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		Page 70
1	Dr. Wahr.	
2	THE WITNESS: Okay.	
3	(Break taken.)	
4	MR. HANSEN: Dr. Wahr, I have no	
5	further questions for you at this time.	
6	Thank you.	
7	Do you want to take a break,	
8	or do you want to	
9	MR. WALZ: Yeah, if we can take a	
10	break, and I can just kind of get some docs	
11	ready, and then we'll come back.	
12	(Break taken.)	
13	EXAMINATION	
14	BY MR. WALZ:	
15	Q. Dr. Wahr, are you ready?	
16	A. Yes.	
17	Q. Okay.	
18	MR. WALZ: I'll just have you mark	
19	this first.	
20	(Exhibit Number 3 was marked.)	
21	BY MR. WALZ:	
22	Q. So, Dr. Wahr, you've been handed what's been	
23	marked as Deposition Exhibit Number 3. This	
24	was a document produced by Holaira.	
25	Do you recognize that document?	

		Page 71
1	A. Yes.	
2	Q. And if we turn to page well, it's	
3	Bate-numbered 1392?	
4	A. Yes.	
5	Q. At the bottom there, there's next to	
6	signature, Dennis W. Wahr; is that correct?	
7	A. Yes.	
8	Q. And that is your signature?	
9	A. Yes.	
10	Q. And	
11	A. Well, I don't see a signature, but it's my	
12	name typed.	
13	Q. That's an electronic signature, correct?	
14	A. Oh, okay. All right.	
15	Q. And you signed this application, correct?	
16	A. I I probably did, yes. It's three years	
17	ago.	
18	Q. So, it's possible that someone else signed	
19	this application?	
20	A. No, I just don't see my signature on here.	
21	MR. HANSEN: Objection to the form.	
22	THE WITNESS: No. Yeah, so, you	
23	know, I mean I'm taking your word for it	
24	that somebody printed this up with numbers.	
25	BY MR. WALZ:	

		Page 72
1	Q. Right. And you reviewed this application	
2	before you signed it, correct?	
3	A. Yes.	
4	Q. And you understood what you were applying	
5	for when you sign the application, correct?	
6	A. Yes.	
7	Q. And all the information in this application	
8	was correct as of December 19th, 2012 when	
9	the application was signed, correct?	
10	A. I haven't it's been a long time since	
11	I've read it, but I assume it was.	
12	Q. So, if we look at the let's see here, if	
13	we look at the page Bate-numbered 1391?	
14	A. Yes.	
15	Q. You will see, next to International Class	
16	10, there's a description that reads:	
17	Medical devices, medical apparatus and	
18	instruments?	
19	A. Yes.	
20	Q. Now, that identification was at some point	
21	amended; is that correct?	
22	A. I don't know if we amended this or not. I	
23	don't know the answer to that.	
24	Q. Okay.	
25	A. I don't understand your question.	
1		

	Page 73
1	(Exhibit Number 4 was marked.)
2	BY MR. WALZ:
3	Q. So, you've been handed what's been marked as
4	Deposition Exhibit Number 4. This is a
5	printout from the United States Patent and
6	Trademark Office test database, and next to
7	the Goods and Services heading, there's a
8	description that reads: Medical devices for
9	treating obstructive lung diseases; medical
10	apparatus and instruments for treating
11	obstructive lung diseases.
12	Do you see that?
13	A. Yes.
14	Q. And that's different from the description we
15	saw on Exhibit 3, correct?
16	A. In that paragraph that starts,
17	"International Class;" you're referring to?
18	Q. Correct, on Exhibit Number 3.
19	A. Well, it's I mean, the wording is
20	slightly different, but it's saying the same
21	thing. I mean, it's it's a device for
22	treating obstructive it's a medical
23	apparatus and instrument. The one the
24	one on the right is looks like it's more
25	detailed.

		Page 74
1	Q. And when you say "the right," you're	
2	referring to Exhibit Number 4, correct?	
3	A. Right.	
4	Q. And looking at Exhibit Number 4, does that	
5	description accurately reflect the device	
6	that will be used in connection with the	
7	Holaira mark?	
8	A. Yes, this is appropriate.	
9	Q. Okay. And you have no intention of further	
10	amending or clarifying the identification	
11	description that you see in Exhibit	
12	Number 4, correct?	
13	A. Not at this point in time.	
14	Q. Okay. And just for a purpose of clarity, I	
15	think when you were discussing before the	
16	difference between dNerva the mark	
17	dNerva	
18	A. Yes.	
19	Q and the Holaira mark, you mentioned that	
20	dNerva will be used as the product name, but	
21	that Holaira is going to be the company	
22	name?	
23	A. Holaira Holaira is the company name. The	
24	system, you know, the whole system that	
25	consists of the console, you know, and the	

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	Page 75
1	catheter, we call the Holaira Lung
2	Denervation System.
3	Q. Okay.
4	A. But the catheter, the catheter that's
5	disposable, the part that goes through the
6	bronchoscope, is the dNerva catheter.
7	Q. I see, okay.
8	(Exhibit number 5 was marked.)
9	BY MR. WALZ:
10	Q. So, you have been handed what's been marked
11	as Deposition Exhibit Number 5.
12	Do you recognize this document?
13	A. Yes.
14	MR. HANSEN: I'll just object it's
15	outside the scope of the direct examination.
16	MR. WALZ: We'll bring it within
17	the scope.
18	THE WITNESS: Yes.
19	BY MR. WALZ:
20	Q. You do recognize it? Okay.
21	And if we flip to the second to the
22	last page again at the bottom, we see next
23	to signature, Dennis Wahr?
24	A. Yes.
25	Q. That is your signature?

		Page 76
1	A. Yes.	
2	Q. And you did sign this application as well?	
3	A. Yes.	
4	Q. Okay. And then if we look on the third page	
5	from the end, next to Class 10, we see	
6	medical devices, medical apparatus and	
7	instruments, correct?	
8	A. Yes.	
9	(Exhibit Number 6 was marked.)	
10	BY MR. WALZ:	
11	Q. So, you have been handed what's been marked	
12	as Deposition Exhibit Number 6. This is a	
13	printout from the United States Patent and	
14	Trademark Office test database. It's for	
15	the dNerva mark, and, again, next to the	
16	heading Goods and Services, we see medical	
17	devices for treating obstructive lung	
18	diseases; medical apparatus and instruments	
19	for treating obstructive lung diseases?	
20	A. Yes.	
21	MR. HANSEN: Objection, outside of	
22	the scope of the direct examination.	
23	BY MR. WALZ:	
24	Q. And similar to the Holaira mark we saw	
25	before, comparing the Exhibit 6 to	

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		Page 77
1	Exhibit 5, the description was amended,	
2	correct, to what appears on Exhibit 6?	
3	MR. HANSEN: Same objection.	
4	You can answer.	
5	THE WITNESS: Okay. The words on	
6	the on the Exhibit 6 are are slightly	
7	different than here, but, again, it appears	
8	like they're saying the same thing.	
9	BY MR. WALZ:	
10	Q. And if we compare Exhibit 6 with, I	
11	believe what was the Holaira I can't	
12	remember the number test page? So, is	
13	that Exhibit 4?	
14	A. 4.	
15	Q. So, if we compare what's in Exhibit the	
16	identification in Exhibit 6 with the	
17	identification of the goods description in	
18	Exhibit 4, those descriptions are the same?	
19	A. They look the same.	
20	MR. HANSEN: Same objection.	
21	BY MR. WALZ:	
22	Q. Okay. And if you look at Exhibit 1	
23	MR. HANSEN: Do you mean Exhibit 3,	
24	Brad?	
25	MR. WALZ: I'm sorry, Exhibit 3.	

		Page 78
1	BY MR. WALZ:	
2	Q. If we look at the page that's numbered 1391,	
3	underneath that International Class 10,	
4	there's an Intent to Use, and it says: The	
5	applicant has a bona fide intention to use	
6	the or use through an applicant's related	
7	company or licensee the mark in commerce or	
8	in connection with the identified on or	
9	in connection with the identified goods or	
10	services.	
11	Do you see that?	
12	A. Yes.	
13	Q. And at the time you signed this application,	
14	you had the present intent to use the	
15	Holaira mark in connection with a medical	
16	device for treating obstructive lung	
17	diseases, medical apparatus and instruments	
18	for treating obstructive lung diseases,	
19	correct?	
20	A. Yes, after going through all the appropriate	
21	regulatory approvals.	
22	Q. Right.	
23	A. Yeah.	
24	Q. And after if we look at Exhibit 5, that's	
25	the dNerva application, looking on page	

		Page 79
1	page 4, under that International Class 10,	
2	we have that same "intent to use" language?	
3	MR. HANSEN: Object, outside the	
4	scope.	
5	You can answer.	
6	THE WITNESS: Yes.	
7	BY MR. WALZ:	
8	Q. And the dNerva application was filed, if we	
9	look at the second to the last page or	
10	was signed, I should say, on April 25th,	
11	2013, correct?	
12	A. Yes.	
13	Q. And then if we look at Exhibit 6, and we	
14	look at the filing date, it was actually	
15	filed the same day as well, correct?	
16	A. Yes.	
17	Q. And that's approximately four months after	
18	the Holaira application, which is Exhibit 3,	
19	was signed by you, correct?	
20	A. Yes.	
21	Q. So, my question is: How could you have a	
22	bona fide intent to use the Holaira mark if	
23	four months later you filed an application	
24	for the dNerva mark with the exact	
25	identification of goods descriptions?	

	Page 80
A. Well, the we decided that we wanted a	
distinct name for for the actual catheter	
itself versus the system, and so, we wanted	
one more we wanted a different it's	
different parts of it's a specific part	
of the bigger system.	
You know, the system is the Holaira	
Lung Denervation System, but the disposable	
product is its own entity. It's different.	
Q. So, is the dNerva application, the ID in	
that dNerva application, misdescriptive of	
the goods that will actually be used in	
connection with the mark?	
MR. HANSEN: Object to form and	
outside the scope.	
BY MR. WALZ:	
Q. I guess I'm trying to find out if one of	
these applications is misdescriptive of	
of what you intend to use the mark for?	
A. Well, the the description is general. I	
mean, they both apply. I mean, it's	
accurate for both. It's a correct	
designation for both both marks.	
Q. But you said dNerva would be used in	
connection with the disposable catheter, not	
	distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a different it's different parts of it's a specific part of the bigger system.  You know, the system is the Holaira Lung Denervation System, but the disposable product is its own entity. It's different.  Q. So, is the dNerva application, the ID in that dNerva application, misdescriptive of the goods that will actually be used in connection with the mark?  MR. HANSEN: Object to form and outside the scope. BY MR. WALZ:  Q. I guess I'm trying to find out if one of these applications is misdescriptive of of what you intend to use the mark for?  A. Well, the the description is general. I mean, they both apply. I mean, it's accurate for both. It's a correct designation for both both marks.  Q. But you said dNerva would be used in

		Page 81
1	a medical device for treating obstructive	
2	lung diseases?	
3	A. Well	
4	MR. HANSEN: Object to the form.	
5	THE WITNESS: Well, the catheter is	
6	part of the system. So, it would be used in	
7	the same way, and you're confusing me. I'm	
8	not sure where you're going with that.	
9	BY MR. WALZ:	
10	Q. That's okay. We can move on.	
11	A. Okay.	
12	Q. So, the Holaira device can be used to treat	
13	chronic asthma, correct?	
14	A. In theory, if we if we chose to go that	
15	way, in theory, it could, yes. It would be	
16	a completely new clinical development	
17	program.	
18	Q. And that is an area that you're thinking of	
19	expanding into, correct?	
20	A. Not right now.	
21	Q. But it is something that you have	
22	A. It's theoretically possible that we could	
23	make that decision at some point in the	
24	future.	
25	Q. Right. But you've promoted that to	
1		

		Page 82
1	potential investors and and identified it	
2	as a potential area?	
3	A. Yes.	
4	Q. And you market as you testified, you	
5	market the device to physicians, right,	
6	interventional pulmonologists?	
7	A. Interventional pulmonologists.	
8	Q. Okay. And you're marketing that as a	
9	treatment for COPD, correct?	
10	A. Correct.	
11	Q. And that term is understood as an umbrella	
12	term, right?	
13	A. COPD, yes.	
14	Q. And so, under that umbrella, would include a	
15	condition such as chronic asthma, correct?	
16	A. No. COPD is generally is generally felt	
17	to have two major components. One would be	
18	emphysema, and the other would be chronic	
19	bronchitis.	
20	Asthma is a is felt to be a	
21	distinct different disease process. We	
22	we do not believe that we certainly	
23	believe that asthma does not fall under our	
24	label indications.	
25	MR. WALZ: Okay. Would you mark	

	Page 83
1	that as 7, I believe.
2	(Exhibit Number 7 was marked.)
3	BY MR. WALZ:
4	Q. So, you've been handed what's been marked as
5	Deposition Exhibit Number 7. It is a
6	printout from the
7	medical-dictionary.thefreedictionary.com.
8	These are definitions concerning COPD.
9	If you turn to page 5, and I guess
10	it flows over into page 6, and if you look
11	at page 6 first, this is well, the
12	definition that begins on page 5 for COPD
13	that turns over or spills over onto page
14	6 at the bottom, this is a definition from
15	McGraw-Hill Concise Dictionary of Modern
16	Medicine.
17	Do you see that at the bottom?
18	A. Yes.
19	MR. HANSEN: I'll object to the
20	document as containing hearsay.
21	BY MR. WALZ:
22	Q. So, if you turn to the first page or on
23	page 5, that final dictionary definition for
24	COPD states: Chronic Obstructive Pulmonary
25	Disease, Pulmonology, an umbrella term for a

	Page 84
1	group of usually progressive lung disorders
2	with overlapping signs and symptoms,
3	including asthma.
4	Do you see that?
5	MR. HANSEN: Object, hearsay,
6	foundation.
7	THE WITNESS: I'm not sure what
8	page I can't seem to find the page you're
9	on.
10	BY MR. WALZ:
11	Q. So, at the top of each page, there are page
12	numbers; do you see that?
13	A. Oh, okay. What page?
14	Q. Page 5, and that definition begins at the
15	bottom and spills over.
16	So, I was saying, do you see on
17	page 5, that last definition of COPD?
18	A. Yes.
19	MR. HANSEN: Same objections.
20	BY MR. WALZ:
21	Q. And it says: Chronic Obstructive Pulmonary
22	Disease, Pulmonology, an umbrella term for a
23	group of usually progressive lung disorders
24	with overlapping signs and symptoms,
25	including asthma?

		Page 85
1	MR. HANSEN: Same objection.	
2	BY MR. WALZ:	
3	Q. Do you see that?	
4	A. Yes.	
5	Q. Okay. And then if we turn to page 6, we see	
6	another definition of COPD at the bottom.	
7	This is from the Gale Encyclopedia of	
8	Medicine, and it says: A term used to	
9	describe chronic lung diseases, like chronic	
10	bronchitis, emphysema and asthma?	
11	MR. HANSEN: Same objections.	
12	BY MR. WALZ:	
13	Q. Do you see that?	
14	A. Yes.	
15	Q. Do you have any reason to dispute these	
16	definitions?	
17	A. I think that our our definition of	
18	Chronic Obstructive Pulmonary Disease is	
19	what we our indications on our labelling	
20	indication are for chronic bronchitis and	
21	emphysema. Asthma is excluded. We don't	
22	treat asthma.	
23	Q. Okay. But a doctor would understand, or a	
24	physician would understand, the term "COPD"	
25	according to these medical dictionary	

		Page 86
1	definitions to include asthma?	
2	MR. HANSEN: Objection, form,	
3	foundation and hearsay.	
4	THE WITNESS: No, I don't agree.	
5	BY MR. WALZ:	
6	Q. But the Holaira System will compete with the	
7	Alair System; is that correct?	
8	A. No, it will not.	
9	Q. You said though that the Holaira System	
10	could possibly treat asthma?	
11	A. We have no clinical development program for	
12	asthma, and every pulmonologist, as well as	
13	interventional pulmonologist, sees them as	
14	distinctly different diseases, and the only	
15	way we could treat asthma would be if we	
16	started over from scratch with a completely	
17	new Phase 1, you know, feasibility study in	
18	asthma patients, which, at this point, there	
19	has been nothing initiated to start such a	
20	program. It would be unaffordable for us to	
21	do that.	
22	Q. To start	
23	A. An asthma program.	
24	Q an asthma program?	
25	A. Yes.	
		ļ

	Page 87
1	Q. But you are marketing that to your investors
2	as a potential area of growth, correct?
3	A. If in the future, if a new if a new
4	if another company were to buy Holaira, they
5	could make a decision to start an asthma
6	program in theory, but understand that it
7	would be going all the way back to the
8	starting point and starting at point 0 in
9	terms of that, and and the earliest
10	commercialization date for us to have a
11	label indication for asthma, if somebody
12	wanted to start that today, might be 2025.
13	I mean, it's way out there, and it
14	would be another \$100 million development
15	program, which has not started at this
16	point.
17	(Exhibit Number 8 was marked.)
18	BY MR. WALZ:
19	Q. Showing you what's been marked as Deposition
20	Exhibit Number 8.
21	Do you recognize this document?
22	A. Yes, yes.
23	Q. And what is this?
24	A. This is a presentation that I gave at the
25	Piper Jaffray Healthcare Conference.

Page 88 Q. So, if you turn to page 2, in the heading, 1 2 it says: Holaira, Treatment For COPD and 3 Asthma, right? 4 A. Yes, yes. 5 Q. Okay. And if we look at page 11, it's Bate-numbered 12 --6 A. Yes. 7 8 Q. -- we see a -- a chart of revenue 9 projections, and then at the bottom of that 10 chart, there's a box? 11 A. Yes. 12 Q. And it says: COPD and asthma indication 13 split 70/30 in 2022? 14 A. Yes. 15 Q. And then if we turn to page 12, 16 Bates-numbered 13, and again we see at the 17 top in the heading, this is a competitive landscape, and in the chart, there is, in 18 19 the second box below company product, 20 Holaira, and then if we go to the right 21 under COPD, there's a checkmark; under 22 asthma, there's a checkmark; and under 23 emphysema, there's a checkmark. Do those checkmarks indicate that 24 25 the Holaira device can be used --

		Page 89
1	A. Yes.	
2	Q to treat these conditions?	
3	A. Yes, it could, yes.	
4	Q. And then if we move below the Holaira box,	
5	there's an entry for BSC that says, formerly	
6	Asthmatx/Alair; and under that, we see a	
7	checkmark in asthma?	
8	A. Yes.	
9	Q. And that indicates that the Alair System is	
10	used to treat asthma, correct?	
11	A. Yes.	
12	Q. And Boston Scientific is identified on a	
13	chart where you've labeled it competitive	
14	landscape as a competitor, correct?	
15	A. Yes.	
16	Q. And if we turn to the very last page I'm	
17	sorry, page 17, Bates-labelled 18, we see a	
18	slide labeled titled: Series D Financing	
19	Highlights I'm sorry, are you there?	
20	A. Yeah, I know it. Go ahead.	
21	Q. And underneath the bullet point, Milestones	
22	Through 2016, there's a subpoint for asthma	
23	as part of the clinical heading?	
24	A. Yes.	
25	Q. And that there's six months of data from the	

		Page 90
1	asthma feasibility study.	
2	Does this mean that you've already	
3	started a feasibility study for the use	
4	use of the Holaira device to treat asthma?	
5	A. No, this was this was a slide done,	
6	because at the time we were raising our	
7	\$40 million, we did not have an asthma	
8	program. We wanted to leave open the	
9	possibility that if one of our investors	
10	if our lead investor wanted us to start one,	
11	that's when this could be available, but, in	
12	fact, when we closed the \$40 million	
13	financing, our new investors did not want to	
14	do an asthma program.	
15	So, therefore, this has completely	
16	dropped off the radar screen, if that makes	
17	sense to you.	
18	Q. Yep.	
19	A. So, our clinical program is emphysema and	
20	chronic bronchitis.	
21	Q. Let's talk a little bit about targeted lung	
22	denervation.	
23	So, I think, as you testified	
24	before, targeted lung denervation, TLD, is	
25	the generic name that you have created for	

		Page 91
1	your procedure, correct?	
2	A. Yes.	
3	Q. And that's similar to what, you know,	
4	Boston Scientific had done with bronchial	
5	thermoplasty?	
6	A. Exactly.	
7	Q. And TLD is a procedure that will require a	
8	patient's informed consent, right?	
9	A. Yes.	
10	Q. And with respect to the informed consent	
11	obligations, one of the things that will	
12	have to be discussed is the nature of the	
13	procedure, correct?	
14	A. Yes.	
15	Q. So, as you described before, the use of a	
16	bronchoscope, the use of a catheter to place	
17	a energy emitter within the main bronchi,	
18	and then the administration of energy in	
19	that main bronchi, correct?	
20	A. Correct.	
21	Q. And there will have to be a discussion with	
22	the patient that the Holaira device will be	
23	used as part of that TLD treatment?	
24	A. Absolutely.	
25	Q. And in discussing the nature of the	

		Page 92
1	procedure, you'll also have to explain to	
2	the patient or the doctor will, I should	
3	say, that, as you described, the treatment	
4	is intended to denervate the nerves, that it	
5	will not have it's not intended to avoid	
6	any of the smooth muscle of the bronchi,	
7	correct?	
8	A. Yes.	
9	Q. And, in fact, there is no effect to the	
10	smooth muscle through targeted lung	
11	denervation, correct?	
12	A. That that's what we believe, yeah.	
13	Q. So, then you will have to discuss the risk	
14	and benefits with or the physician will,	
15	with respect to TLD, and you'll also have to	
16	discuss any alternatives, correct?	
17	A. Yes, yes.	
18	Q. And an alternative would be bronchial	
19	thermoplasty?	
20	A. For what we do? No, bronchial thermoplasty	
21	is not indicated for COPD I mean, for	
22	chronic bronchitis or emphysema.	
23	Q. But that so, bronchial thermoplasty,	
24	though, has an effect on the smooth muscle	
25	tissue?	

Page 93 A. Yes. 1 2 Q. And --3 A. That's what they say, yes. Q. And we talked about how COPD is an umbrella 4 5 term, and that chronic asthma is underneath 6 that umbrella? A. You -- you've completely manufactured that. 7 8 No interventional pulmonologist buckets 9 asthma with emphysema or chronic bronchitis. 10 Those are -- the two things that we treat 11 are completely different from asthma period. That's why we have them in the three 12 columns. Boston cannot -- is not an label 13 14 to treat chronic bronchitis or emphysema. 15 Q. But there are variations to asthma, isn't 16 there? You can have acute asthma? 17 A. There -- there is a classification of 18 asthma, where -- where, in the severest 19 form, some of the pulmonologists will say 20 that it starts to look like COPD, but -- but 21 those are not -- those patients are not 22 included in our protocol or will be 23 on-label. 24 Q. So, a patient --25 A. They're different.

		Page 94
1	Q. But a patient with chronic asthma, though,	
2	if they were to talk to a physician about	
3	TLD, a physician would have to have a	
4	discussion at least about what treatment is	
5	available for asthma, correct?	
6	A. No, because there's	
7	MR. HANSEN: Object to form.	
8	THE WITNESS: there's no label	
9	indication for what we do.	
10	BY MR. WALZ:	
11	Q. Is there ever any operable use?	
12	A. Huh?	
13	Q. Does operable use happen at all?	
14	A. It never it never happens with a	
15	non-commercially-approved product.	
16		
17		
18	Q. Oh, right, obviously. We're not yeah,	
19	right, I guess, yeah, to bring	
20	A. I mean, if they want to go to jail, they can	
21	do that if they want.	
22	Q. Yeah, we're talking about a product that is	
23	not yet commercialized, right?	
24	A. Right.	
25	Q. We're talking about an intent to use	

		Page 95
1	trademark application.	
2	So, just so I understand, as part	
3	of a of a doctor's informed consent	
4	obligation, you're saying that a patient	
5	that they're advising with respect that	
6	has chronic asthma would not have to be told	
7	that, in addition to targeted lung	
8	denervation, which could be used to treat	
9	their condition, there's a separate	
10	procedure called bronchial thermoplasty,	
11	which could be an alternative to targeted	
12	lung denervation?	
13	MR. HANSEN: Object to the form,	
14	lack of foundation.	
15	THE WITNESS: Absolutely not.	
16	You're really mixed up on this. You know,	
17	the an asthma patient under any	
18	circumstances, no doctor in the world would	
19	tell an asthma would tell an asthma	
20	patient that TLD is an alternative therapy	
21	for what they have.	
22	TLD at this point is an	
23	experimental therapy only being tested in	
24	chronic bronchitis and emphysema that,	
25	they will get an approval, and	
1		

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		Page 96
1	there's nothing even in the works.	
2	They would have absolutely no	
3	obligation to tell a patient that.	
4	BY MR. WALZ:	
5	Q. Okay.	
6	A. And even if they did, it would be totally	
7	unavailable.	
8	Q. Okay. So, what yeah, I guess, again,	
9	we're talking again, you're not using the	
10	mark the device so, I'm not talking	
11	about we need to think about in terms of	
12	when your product is actually available and	
13	gets approval,	
14	A. Right.	
15	Q. So, when you're both in the market	
16	A	
17	Q. So, the two treatments are now	
18	actually available.	
19	TLD is available to persons?	
20	A. For asthma I mean, excuse me, TLD for	
21	chronic bronchitis and emphysema, right?	
22	Q. COPD, right?	
23	A. No.	
24	Q. That's	
25	A. No, if you are choosing to arbitrarily use	

	Page 97
1	COPD as this higher bucket, like your thing
2	says, then then it's an inappropriate
3	umbrella, because we are only going to be
4	approved for emphysema and chronic
5	bronchitis.
6	(Exhibit Number 9 was marked.)
7	BY MR. WALZ:
8	Q. Handing you what's been marked as Deposition
9	Exhibit 9.
10	If you turn to the second page?
11	A. Yep.
12	Q. This is it's titled: Six Degrees
13	Confidential Backgrounder.
14	Do you recognize this document?
15	A. What's the date of this one? October 12.
16	Yeah, this one would have been created about
17	a week after I started, but I recognize a
18	lot of the things in here. I'm not sure
19	I've seen this before, but go ahead.
20	Q. Okay. So, if we look at just even the
21	executive summary, and this was let me
22	back up.
23	I mean, the intent of this document
24	was to educate Six Degrees, who was your
25	marketing firm that was retained to help you

Page 98 1 with the naming process, right --A. Yes. 2 3 Q. -- to understand your company? 4 A. Yes. Q. Okay. So, in the executive summary, there, 5 6 it says that: IPS is a system -- the main 7 objective of the IPS System is the 8 development of a commercial product to 9 enable a new therapeutic procedure, TLD, 10 which will improve respiratory function for 11 moderate to severe COPD patients? 12 A. Yes. 13 Q. And it doesn't say chronic bronchitis or 14 emphysema, correct? A. You know --15 16 MR. HANSEN: Feel free to review 17 the entire document before you answer 18 questions about it. 19 THE WITNESS: Yeah, I think you're 20 taking this out of context. Our COPD 21 definition that we use throughout the entire 22 company is COPD is chronic bronchitis and 23 emphysema. It is not asthma. Our clinical 24 programs, you know, make it clear that 25 asthma is not included.

		Page 99
1	But, by the way, could our device	
2	eventually at some point be used to treat	
3	asthma? The answer is yes, and I've said	
4	that already, but we're not developing it	
5	for that. So, that's the answer to your	
6	question.	
7	You know, so	
8	BY MR. WALZ:	
9	Q. Okay.	
10	A I mean, you're arguing over the semantics	
11	of this, but I can promise you, in	
12	interventional pulmonology, we can bring in	
13	20 experts, and they all see asthma,	
14	chronic bronchitis and emphysema as three	
15	completely different entities.	
16	Now, most people traditionally	
17	would put just two of them under COPD,	
18	chronic bronchitis and chronic bronchitis	
19	and emphysema under COPD. That's what you	
20	see under every commercial on TV when you	
21	see Spiriva advertised. And they put asthma	
22	over here in a different category, because	
23	its mechanism of action is different, and	
24	it's a different disease process.	
25	Q. Right.	

		Page 100
1	A. And and that's that's how we use it,	
2	but the point is is that I'm not denying the	
3	fact that, if we ever if a future owner	
4	or investor or something wanted to start an	
5	asthma program, our device could could do	
6	that, and that's why it appears in there.	
7	I'm just simply saying we're not doing that	
8	right now.	
9	Q. Right.	
10	A. And and if somebody decided to do it, it	
11	would be way out there.	
12	Q. Okay.	
13	A. And I don't understand what that has to do	
14	with the trademark anyway.	
15	Q. Yeah, this is just this is just you	
16	know, in all of the documents I've seen	
17	produced by Holaira	
18	A. Yeah.	
19	Q reference is always made to COPD. So,	
20	that's why I just wanted to get some	
21	clarification as, you know and you even	
22	describe it on your Website as an umbrella	
23	term?	
24	A. Over	
25	Q. So	

	Page 101
1	A over CO over emphysema and chronic
2	bronchitis, yes.
3	Q. But as we saw in some of those medical
4	definitions, you know, asthma has been
5	included as under the umbrella?
6	A. I will go on the record though as the vast
7	majority of people in this space of the
8	experts separate asthma under a completely
9	separate umbrella and not under the COPD
10	umbrella. That's my statement, but it
11	doesn't matter to this anyways.
12	Q. That's your opinion, right?
13	A. Right, it's my opinion, and it's clearly
14	the the opinion of the vast majority of
15	people that this is how they would classify
16	it.
17	(Exhibit Number 11 was marked.)
18	BY MR. WALZ:
19	Q. So, you have been handed what's been marked
20	as Exhibit 11. This is an email from
21	Mark Laverman to Lorraine and also yourself.
22	You are identified as a recipient, and this
23	email attached two PowerPoint presentations.
24	One is the messaging blueprint, and
25	the second is the the naming what is

	Page 10	)2
1	it called? Is it the naming concept?	
2	So, you previously testified that	
3	you were targeting only interventional	
4	pulmonologists with respect to your sales	
5	efforts?	
6	A. It was the primary target.	
7	Q. So, it's not the only target?	
8	A. It's not the only target.	
9	Q. Okay. What are some of the other targets?	
10	A. Well, if you're putting if you wear my	
11	hat as the CEO, my primary targets are,	
12	number one, the customer, which is	
13	interventional pulmonologists. Number two,	
14	you're you're also targeting with what	
15	you do the investors. That's critical for a	
16	company at our stage.	
17	You know, those would be you	
18	know, those would be the two most important,	
19	SO	
20	Q. Anyone else?	
21	A. Well, I mean, you're also I mean, you're	
22	also you're also going to target general	
23	pulmonologists. You're going to target all	
24	of the physicians, you want to have an	
25	awareness of that, and you want to target	

		Page 103
1	future acquirers, you know, of the company,	
2	you know, so, you know, you want to put out	
3	to you want to reach out to all of them,	
4	and you're happy to have patients gain	
5	awareness of it as well.	
6	Q. So, you won't reach out to patients?	
7	A. Not directly, no.	
8	Q. Okay. If you turn to the page Bate-numbered	l
9	538, there's a title there of the report	
10	called Audience Audiences?	
11	A. Which page?	
12	Q. It's Bate-numbered 538.	
13	A. I don't seem to have numbers on mine.	
14	Q. It's on the right lower right. Yeah, you	
15	got it right there.	
16	A. Oh, here we go.	
17	Q. Yep. So, it's titled, Audiences; you see	
18	that at the top?	
19	A. Um-hmm.	
20	Q. And at the far right actually, let's back	
21	up.	
22	On the left, we have the medical	
23	community, which you talked about, right,	
24	the interventional pulmonologists,	
25	et cetera; the financial community is to the	

Page 104 1 right of that medical community box; and 2 then at the far right, we have consumers? 3 A. Yes. 4 Q. So, you're -- you're telling me you're not 5 going to target consumers? 6 A. Our -- our marketing -- our marketing efforts right now are clearly related to the 7 8 interventional pulmonologists. I mean, we 9 certainly don't want to hide this from the 10 patients. We do no active marketing to 11 patients, but eventually down the line --12 down the line, if you have a novel medical 13 therapy, you wouldn't -- I mean, you're not 14 going to block that from happening, but 15 you're not going to spend money on it. 16 Q. You will not spend money on even down the 17 road on --18 A. On actively reaching out to the patients. I mean, this will be something with -- I mean, 19 20 patients with COPD and emphysema come to 21 their pulmonologist, and then -- and they --22 it's that pulmonologist then that will be 23 the key decision-maker, the interventional 24 pulmonologist. Q. So, will you make any -- once you're 25

		Page 105
1	commercialized, will you make any marketing	
2	material that potentially could be	
3	distributed to a consumer?	
4	A. We have no plans at this point. Would we do	
5	the stuff like what the pharmaceutical	
6	companies do with direct TV marketing, I	
7	actually don't believe in that.	
8	Q. But you'll so, it's not in your plan to	
9	create any marketing material, but is it a	
10	possibility?	
11	A. Maybe for some big company in the future.	
12	They might choose to do it. It would be a	
13	highly ineffective way to do it I think,	
14	but	
15	Q. To market the Holaira?	
16	A. To go direct to patients with a product that	
17	only a highly sophisticated subspecialist	
18	I don't really see St. Jude and Medtronic	
19	going to customers to market their	
20	particular type of aortic valve prostheses,	
21	you know, when they when the patient	
22	would have no idea what the right prostheses	
23	is for the aortic valve. It is possible?	
24	Sure. It's not the primary target.	
25	Q. But the Holaira device is tied closely to	

		Page 106
1	TLD, correct?	
2	MR. HANSEN: I'm just going to	
3	lodge an objection. You're sometimes you	
4	pronounce it Holaira, and sometimes you	
5	pronounce it Olaira [ph]. I just want to	
6	make sure that you're meaning Dr. Wahr's	
7	company.	
8	MR. WALZ: Well, as you know, I	
9	mean, there's no right way to pronounce a	
10	coined term. So	
11	MR. HANSEN: But I think the issue	
12	is you're switching back and forth. I just	
13	want to make sure that	
14	MR. WALZ: Yeah, Olaira, Holaira, I	
15	mean, that's referring to yeah.	
16	MR. HANSEN: Okay.	
17	BY MR. WALZ:	
18	Q. So, let's look at Exhibit Number 2, and if	
19	we turn to the page Bate-numbered 111?	
20	A. Got it.	
21	Q. So, it's true that, at all times during this	
22	naming and branding process, that your	
23	company, you were aware of Boston	
24	Scientific's Alair System, correct?	
25	A. Yes.	

		Page 107
1	Q. And this page that we're looking at, 111, is	
2	the list of short names, as you testified	
3	to, and you've also testified that you	
4	needed to get creative people involved, you	
5	needed to select a name a new name that	
6	was completely unique, correct?	
7	A. Yes.	
8	Q. Unlike any other, correct?	
9	A. That was the goal.	
10	Q. Yet the Holaira mark that you ultimately,	
11	you know, settled on has the L-A-I-R string	
12	included in it, correct?	
13	MR. HANSEN: Form.	
14	THE WITNESS: Yes.	
15	BY MR. WALZ:	
16	Q. And that is the same string of letters	
17	that's in the Boston Scientific Alair mark,	
18	correct?	
19	A. Yes.	
20	Q. And you also testified that, based on	
21	attending meetings, that you were aware of a	
22	lot of "air" marks, although when you	
23	referenced the piece of paper that you took	
24	out of your pocket, there were only four	
25	names on there, correct?	

	Page 108
1	A. Four names on there, yep.
2	Q. And Xolair, you mentioned, was a drug?
3	A. Yes.
4	Q. Singulair is a pharmaceutical?
5	A. Yes.
6	Q. VitalAire is a pharmaceutical?
7	A. Yes.
8	Q. And Alere, L-A A-L-E-R-E, is that a
9	pharmaceutical as well?
10	A. Yes.
11	Q. Do you know how prevalent the use is of the
12	Xolair mark?
13	A. It's I don't. I don't know what their
14	market share is, no, but it's displayed
15	prominently at you know, on trade booths,
16	you know, at pulmonary meetings, so I assume
17	it's being used commercially quite a bit.
18	Q. Does the Holaira device compete with Xolair?
19	A. No.
20	Q. Does it compete with Singulair?
21	A. No.
22	Q. Does it compete with VitalAire?
23	A. No.
24	Q. And how about Alere?

A. No. It doesn't compete with bronchial

25

<ul><li>thermoplasty either.</li><li>Q. I didn't ask you that question, sir.</li></ul>	
2 Q. I didn't ask you that question, sir.	
, , , , , , , , , , , , , , , , , , , ,	
3 You also mentioned that you had	
4 received from consumer feedback about the	
5 Holaira mark in in connection with the	
6 prefix "Ho," that you you had received	
7 some some negative	
8 A. No.	
9 Q potential negative feedback?	
10 A. No, we didn't that was an internal	
11 concern when we just were talking about it,	
12 you know, but no consumer feedback.	
13 Q. So, you did no external testing or	
14 A. No.	
15 Q surveys or anything?	
16 A. That was just our internal discussion.	
17 Q. And when you testified that there had not	
18 been any confusion, you had also testified	
19 that you're not using the mark yet in the	
20 United States, correct?	
21 MR. HANSEN: Object to form,	
foundation, misstates prior testimony.	
23 MR. WALZ: You had asked him if he	
24 had ever experienced or Holaira had	
experienced any actual confusion, and he	

		Page 110
1	said no.	
2	MR. HANSEN: Yeah, and you added to	
3	the question, and you said that, "you	
4	haven't been using the mark in the	
5	United States." I think he said it's on	
6	their business cards, it's on their Website,	
7	it's on their letterhead.	
8	MR. WALZ: I take that back.	
9	MR. HANSEN: I think you misstated	
10	prior testimony.	
11	BY MR. WALZ:	
12	Q. Okay. So, you haven't used the Holaira mark	
13	in connection with the system, the medical	
14	device that you applied for, correct?	
15	A. Applied for for to who? So, in the	
16	United States, it's on our Website. We show	
17	our business cards to US docs, you know, and	
18	we and, you know, we aren't treating any	
19	patients in the US, but, you know, US docs	
20	clearly know about know about Holaira.	
21	Q. It's on the device yet, correct?	
22	A. Oh, you mean on a device that we use in a	
23	clinical setting?	
24	Q. Right.	
25	A. But we well, first of all, we're not	

	Page 111
1	no, we haven't used the device in the US.
2	Q. Right.
3	A. But it's not on there anyway, but we haven't
4	used one even if it was.
5	Q. "Holaira" doesn't appear on the device?
6	A. I mean, not on our commercial device, no. I
7	mean, it's projected to be on our on our
8	device, you know, when we go commercial, but
9	right now we're just using a clinical
10	prototype.
11	Q. Yeah, I guess, just to clarify, when I'm
12	asking questions about sort of the use of
13	the Holaira mark, we both understand that
14	it's you're not commercialized yet, but
15	you're still in clinical.
16	So, when I'm talking about or
17	asking these questions, I'm asking I'm
18	referring to
19	A. We anticipate to put "Holaira" the word
20	"Holaira" on the console.
21	Q. Right.
22	A. But it will say "dNerva" on the catheter.
23	Q. Okay.
24	MR. WALZ: Can we just take five
25	minutes, and I'll see if I've got anything

		Page 112
1	else, and we can wrap-up.	
2	MR. HANSEN: Sounds like a plan.	
3	MR. WALZ: Go enjoy our 4th of	
4	July.	
5	(Break taken.)	
6	MR. WALZ: I've got no further	
7	questions for you, Dr. Wahr.	
8	MR. HANSEN: And I have no further	
9	questions for you either, Dr. Wahr.	
10	We'll read and sign. Thank you.	
11	(At 11:40 a.m., the deposition was	
12	recessed.)	
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1		ERRATA SHEE	Т	
2	Page/Ln	Correction	Reason	
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		Page 114
1	I, DR. DENNIS WAHR, have read this	
2	deposition transcript pages 1 - 112 and	
3	acknowledge herein its accuracy except as	
4	noted on the errata sheet.	
5		
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8	Signature	
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10	Notary Public	
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		Page 115
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1	STATE OF MINNESOTA	
	CERTIFICATE	
2	COUNTY OF WASHINGTON	
3	I, Alexis Jensen, hereby certify	
4	that I reported the deposition of	
4	Dr. Dennis Wahr on the 2nd day of July, 2015	
5	in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell	
3	the truth and nothing but the truth	
6	concerning the matter in controversy	
Ü	aforesaid;	
7		
	That I was then and there a notary	
8	public in and for the County of Washington,	
	State of Minnesota; that by virtue thereof I	
9	was duly authorized to administer an oath;	
10	That the foregoing transcript is a	
	true and correct transcript of my	
11	stenographic notes in said matter,	
4.0	transcribed under my direction and control;	
12	That the cost of the original has	
13	That the cost of the original has been charged to the party who noticed the	
13	deposition and that all parties who ordered	
14	copies have been charged at the same rate	
	for such copies;	
15	•	
	That the reading and signing of	
16	the deposition was not waived;	
17	That I am not related to any of	
	the parties hereto, nor interested in the	
18	outcome of the action and have no contract	
10	with any parties, attorneys or persons with	
19	an interest in the action that has a	
20	substantial tendency to affect my impartiality;	
21	WITNESS MY HAND AND SEAL this 10th	
- '	day of July, 2015.	
22		
23		
24	Alexis Jensen	
	Notary Public	
25		

-					
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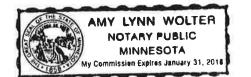
# Errata Sheet for the Deposition of: **Dr. Dennis Wahr**, taken on 07/2/2015 Case Name: **Boston Scientific and Ashmatx**, **Inc. v. Holaira**, **Inc.**

PAGE	LINE	FROM	то	REASON FOR CHANGE
10	11	start	stop	Transcription Error
10	20	insert "it is my belief" be	fore the word "all"	Correction
13	21	Interventional	Innovative	Misstatement
19	12	and	within	Correction
44	16	Alero	Alere	Transcription Error
44	20	Alero	Alere	Transcription Error
45	1	A-L-E-R-O	A-L-E-R-E	Misstatement
51	15-16	Delete "to understand youryour efficacy of a mark"	of your efficacy	Correction
54	15	Start	part	Transcription Error
92	5-6	it's not intended to avoid any of	it is intended to avoid the smooth	Transcription Error
93	13	an	on	Transcription Error
94	11	operable	off-label	Transcription Error
94	13	operable	off-label	Transcription Error

Witness Signature Dennis Wahr

7/28/15 Date

Notary Public



	Page 1
1	UNITED STATES PATENT AND TRADEMARK OFFICE
2	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3	
4	Boston Scientific Corporation and
5	Asthmatx, Inc.,
6	Opposers, Opposition No. 91215699
7	and
8	Holaira, Inc.,
9	Applicant.
10	
11	
12	
13	
14	
15	DEPOSITION OF
16	DR. DENNIS WAHR
17	
18	
19	
20	
21	
22	
23	
24	Taken July 2nd th, 2015 By Alexis Jensen
25	

		Page 2		Page 4
1 APF	PEARANCES:	3	1	THE DEPOSITION OF DR. DENNIS WAHR,
2	LANANOLO.		2	is taken on this 2nd day of July, 2015, at
	PENHEIMER, WOLFF & DONNELLY,	LLP	3	Oppenheimer, Wolff & Donnelly, LLP,
	mpbell Mithun Tower - Suite 2000 2 South Ninth Street		4	Campbell Mithun Tower, Suite 2000,
	neapolis, Minnesota 55402		5	Minneapolis, Minnesota, commencing at
	one: 612.607.7000		6	9:07 a.m.
	ail: dhansen@oppenheimer.com Mr. Dennis E. Hansen		7	DR. DENNIS WAHR,
	For the Applicant		8	having been called as a witness, being duly
7 8 WIN	NTUDOD & MEINSTINE DA		9	sworn, testified as follows:
-	NTHROP & WEINSTINE, P.A. 00 Capella Tower		10	EXAMINATION
9 225	5 South Sixth Street		11	BY MR. HANSEN:
	neapolis, Minnesota 55402 one: 612.604.6725		12	Q. Good morning, Dr. Wahr. I'd like to start
	ail: bwalz@winthrop.com		13	out today by just having a little bit of a
11 By:	Mr. Bradley J. Walz		14	discussion about your background, okay?
12	For the Opposers		15	A. Okay.
13			16	Q. Let's start with your education, starting
14			17	with college, and if you would, take me
15 16			18	through to your highest professional degree
17			19	or certification.
18			20	A. Okay. I went I went undergrad college to
19 20			21	a small liberal arts school in Michigan
21			22	called Albion College, A-L-B-I-O-N. Then I
22			23	went to medical school at Wayne State
23 24			24	University in Detroit, and then did my
25			25	internal medicine residency, three years, at
		Page 3		Page 5
1	INDEX			
	INDEA		1	the University of Michigan. Then I did my
	mination by Mr. Hansen, page 4		1 2	the University of Michigan. Then I did my cardiology fellowship at the University of
Exa				
	mination by Mr. Hansen, page 4		2	cardiology fellowship at the University of
Exa 3 4 IND	mination by Mr. Hansen, page 4		2 3	cardiology fellowship at the University of California, San Francisco, went to UCSF,
Exa 3 4 IND 5	nmination by Mr. Hansen, page 4 nmination by Mr. Walz, page 70 DEX OF EXHIBITS		2 3 4	cardiology fellowship at the University of California, San Francisco, went to UCSF, three years there, where I became an
Exa 3 4 IND 5	amination by Mr. Hansen, page 4 amination by Mr. Walz, page 70		2 3 4 5	cardiology fellowship at the University of California, San Francisco, went to UCSF, three years there, where I became an interventional cardiologist.
Exa 3 4 IND 5 NUM 6 Exh	nmination by Mr. Hansen, page 4 nmination by Mr. Walz, page 70 DEX OF EXHIBITS		2 3 4 5 6	cardiology fellowship at the University of California, San Francisco, went to UCSF, three years there, where I became an interventional cardiologist.  I spent one year on faculty there
Exa 3 4 IND 5 NUM 6 Exh 7	mination by Mr. Hansen, page 4 mination by Mr. Walz, page 70 DEX OF EXHIBITS MBER DESCRIPTION hibit 1 Holaira00615-67, page 23	0	2 3 4 5 6 7	cardiology fellowship at the University of California, San Francisco, went to UCSF, three years there, where I became an interventional cardiologist. I spent one year on faculty there at UCSF. Then I went back to Michigan,
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Exa 3 4 IND 5 NUM 6 Exh 7 Exh 8 Exh 9 Exh 10 Exh 11 12 Exh 13 Exh 14 Exh 15 Exh	mination by Mr. Hansen, page 4 mination by Mr. Walz, page 70  DEX OF EXHIBITS  MBER DESCRIPTION  Mibit 1 Holaira00615-67, page 23  Mibit 2 Holaira000046-113, page 3  Mibit 3 Holaira001388-93, page 70  Mibit 4 TESS, Holaira, page 73  Mibit 5 Trademark/Service Applicated Nerva, page 75  Mibit 6 TESS, dNerva, page 76  Mibit 7 COPD definition, page 83	ion,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	cardiology fellowship at the University of California, San Francisco, went to UCSF, three years there, where I became an interventional cardiologist.  I spent one year on faculty there at UCSF. Then I went back to Michigan, where I practiced cardiology for about 12 years at you know, in Ann Arbor, where I was in private practice at St. Joseph Mercy Hospital and was a clinical professor of cardiology at the University of Michigan.  Then I took a leave of absence for one year to come to Minneapolis and and become a medical device entrepreneur. I started my own medical device company, and that was in the year 2001, and since and never went back. I never went back and
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	Page 6		Page 8
1	A. Yes, yes, I was what they called triple	1	A. Absolutely, yeah.
2	Board-certified. You know, I was	2	Q. What what sorts of medical devices?
3	Board-certified in internal medicine. I was	3	A. Well, certainly balloon angioplasty
4	Board-certified in cardiology and	4	catheters; stents, you know, the wire mesh
5	Board-certified in interventional	5	cylinders that we put in to scaffold open
6	cardiology; all three different levels of	6	blood vessels; atherectomy devices, which is
7	Board certification.	7	where you go in and carve out the plaque,
8	Q. Okay. What's the what's the difference	8	you know, and remove it; closure devices,
9	between cardiology and interventional	9	you know, where you go through pinholes to
10	cardiology?	10	close defects in the heart, you know, holes
11	A. Cardiologists do there's probably four	11	between to atria and the ventricles, and
12	big divisions of cardiology. There's	12	congenital abnormalities that are repaired
13	interventional cardiology; there's	13	now through pinholes.
14	electrophysiology; there's diagnostic	14	All of these things replaced the
15	cardiology, which would be things like	15	need to have to have open-chest surgery.
16	echocardiographies and MRI scans, you know,	16	And now, of course, the another big one
17	they're almost like radiologists; and then	17	are the literally the percutaneous
18	there's intensive care cardiology, you know,	18	valves. I mean, literally replacing valves
19	working in I CUs and things like that.	19	just through pinholes. I mean, those would
20	And they all have their separate	20	be the major areas of interventional
21	Boards, so, you know, it just keeps getting	21	cardiology.
22	more and more subspecialized. So, a	22	Q. Turning now to the entrepreneurial aspect of
23	cardiologist is kind of a generalist of	23	your background.
24	cardiology, and, you know, now there's these	24	In 2001, you mentioned that you
25	four subspecialties of cardiology.	25	started
	Page 7		Page 9
1	•	1	_
1	Q. Okay.	1 2	A. Yes.
2	Q. Okay.  A. It's pretty amazing. It's pretty	2	A. Yes. Q a medical device company.
2 3	<ul><li>Q. Okay.</li><li>A. It's pretty amazing. It's pretty ridiculous.</li></ul>	2	A. Yes. Q a medical device company.  What medical device company was
2 3 4	<ul> <li>Q. Okay.</li> <li>A. It's pretty amazing. It's pretty ridiculous.</li> <li>Q. What what does an interventional</li> </ul>	2 3 4	A. Yes.  Q a medical device company.  What medical device company was that?
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2 3 4 5 6	<ul> <li>Q. Okay.</li> <li>A. It's pretty amazing. It's pretty ridiculous.</li> <li>Q. What what does an interventional cardiologist do? Can you just describe that?</li> </ul>	2 3 4 5 6	A. Yes.  Q a medical device company.  What medical device company was that?  A. It was called Velocimed, V-E-L-O-C-I-M-E-D.  Q. What types of product or products did
2 3 4 5	<ul> <li>Q. Okay.</li> <li>A. It's pretty amazing. It's pretty ridiculous.</li> <li>Q. What what does an interventional cardiologist do? Can you just describe that?</li> <li>A. Yeah, interventional cardiology is the part</li> </ul>	2 3 4 5	A. Yes.  Q a medical device company.  What medical device company was that?  A. It was called Velocimed, V-E-L-O-C-I-M-E-D.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>Q. Okay.</li> <li>A. It's pretty amazing. It's pretty ridiculous.</li> <li>Q. What what does an interventional cardiologist do? Can you just describe that?</li> <li>A. Yeah, interventional cardiology is the part of cardiology that does procedures on patients, you know, and that's really the first thing they started doing were angioplasties. You know, in the mid '80s, that really was origin of interventional cardiology, fixing blocked arteries, working through a pinhole.  That was the beginning of interventional cardiology, the field of interventional cardiology, but now it's gradually expanded to where interventional cardiologists do many different types of procedures, all minimally from a minimally-invasive approach. That's really what defines it.</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes.  Q a medical device company.  What medical device company was that?  A. It was called Velocimed, V-E-L-O-C-I-M-E-D.  Q. What types of product or products did  A. We made  Q Velocimed make?  A. We made three different medical products.  One was what's called an and at the time this was really the first one. It's something called an embolic protection device.  One of the risks of doing angioplasty was sometimes you could go in, inflate a balloon to dilate an artery, but debris could break off and go downstream, you know, and if that happened, you could have damage downstream. Like if that would break off and go to an important place, like the brain or the kidney or something like that, that was one of the areas of

### Page 12 Page 10 then did the angioplasty, and if anything 1 Q. Got it. 1 2 2 A. But then my second company Lutonix, went down, you would catch it. L-U-T-O-N-I-X, that was a Class 3 device 3 Second product was something called 3 4 a PFO closure device, which was an 4 5 umbrella -- a little umbrella, miniature 5 Q. When did -- did vou found Lutonix? 6 umbrella, that you could put through a 6 A. I founded both of these companies. pinhole and go in and close a hole between 7 Q. And when -- when did Lutonix come into 8 8 the right and left atrium of the heart. beina? 9 And the third one was what we 9 A. 2007, and CR Bard bought that company in 10 called a navigation catheter, because one of 10 2000 -- in December of 2011. 11 the things that would start cardiologists 11 Q. What product did Lutonix create? 12 from being able to do a procedure is if they 12 A. We made an angioplasty balloon that had a 13 couldn't get to that spot, you know, through 13 drug coating on it, and so, when you did 14 the curving blood vessels. So, we made a 14 the -- so, when you would do the 15 catheter that could be, using a joystick, 15 angioplasty, the drug would transfer to the 16 16 directed to go around sharp curves. blood vessel wall, and the drug would then 17 St. Jude bought all three of those 17 prevent the artery from re-narrowing, you 18 products in the year -- I started the 18 know, after you did the angioplasty. 19 company in 2001. St. Jude bought that 19 Q. Is that angioplasty balloon approved by the 20 company in 2005, and all three products are 20 FDA? 21 still -- are still being sold around the 21 A. Yes. 22 world today. That was the first company. 22 Q. And you mentioned that it was a Class 3 23 23 Q. Were those products approved for sale by the device? 24 A. 3, yep. First -- first drug-coated 24 25 25 A. All of them eventually achieved worldwide angioplasty balloon in the world to be Page 11 Page 13 1 approval, including US. 1 approved by the FDA. We got approval in 2 2 2012. Q. And what -- are you aware that the FDA 3 classifies medical devices in one of three 3 Q. Where are you currently employed Dr. Wahr? 4 separate classes? 4 A. Holaira, H-O-L-A-I-R-A. 5 5 Q. And when did you join that company? A. Yes. 6 6 A. I joined it in September of 2012. Q. And what -- what class of device were the 7 three devices sold by or created by 7 Q. Did you found that company as well? 8 8 A. No. Velocimed? 9 A. Well, the embolic protection device and the 9 Q. Who founded Holaira? 10 PFO closure device were Class 3 devices. 10 A. An individual called Marty Mayse, and 11 The three classes are, you know, literally 11 co-founded along with another person, an 12 1, 2, 3, where 3 is the -- the highest level 12 engineer named Steve Dimmer. They were 13 co-founders. 13 of sophistication, and, therefore -- you 14 14 know, or potential risk and the most novel, Q. When you joined the company in 2012, was it 15 called Holaira? 15 which then means it needs the most testing. 16 A. No, the company was originally founded in 16 Class 1 devices are typically 17 17 devices that are the least amount of risk. 2008. That's when Marty Mayse and Steve 18 and they're often -- they are often devices 18 Dimmer founded the company. So, when I 19 that are copies of other devices that are 19 joined the company, it was already four 20 out there, that have predicates, and 20 years old, and the original name of the 21 everything's known about them, and it's just 21 company was Interventional Pulmonary Solutions 22 22 kind of like one more copy doing the copycat [sic], all one word. They -- they called it 23 thing. You know, they can get a label as a 23 IPS for short, to abbreviate it. 24 Class 1. Label 2 is somewhere in between. 24 Q. Let's talk about the Holaira -- well, 25 The navigation device was Class 2. 25 actually, I should first ask you: What's

	Page 14		Page 16
1	your role at Holaira? What do you do there?	1	and when when the interventional
2	A. I'm the CEO.	2	pulmonologist puts it down, he can position
3	Q. And have you always been the CEO?	3	it in both the right mainstem bronchus first
4	A. Yeah well, since they hired me, yeah, for	4	and then the left mainstem bronchus. You
5	the last three years, yeah.	5	can actually do it in either sequence.
6	Q. Okay. Let's talk about the the products	6	That could be the working end of
7	that Holaira creates.	7	the catheter has an electrode on it, which
8	What what is the product that	8	is used to deliver the energy, and when that
9	Holaira creates?	9	electrode is positioned correctly inside the
10	A. We we have a product that's called the	10	right or left main bronchus, the energy can
11	name of the product is dNerva, and what it	11	be turned on, so that it delivers thermal
12	is is it's a we use it to do a procedure	12	energy to the wall of the the main
13	called targeted lung denervation, and the	13	right the right and left mainstem
14	and the system that does it we call the	14	bronchus that can denature the nerves that
15	Holaira Lung Denervation System.	15	go to the lung permanently, so that those
16	Q. Can you describe for me what components	16	nerves are interrupted.
17	there are to the Holaira Lung Denervation	17	And what's great about that is
18	System?	18	those nerves are what if you if you
19	A. Yes, there are there's a the system	19	interrupt those nerves, it allows the
20	has a console. The console does really	20	airways to dilate, open.
21	three three things that are important.	21	Q. Let's just back up for a second.
22	It has a it's the generator for the	22	You you referred to something
23	energy, you know, RF energy, radio frequency	23	called a bronchus?
24	energy, which is the power we use to for	24	A. Yes.
25	the therapeutic effect, which I'll describe	25	Q. What is the bronchus?
	Page 15		Page 17
1	in a minute.	1	A. Anatomically, your main airway. It comes
2	It also has the pump in it, because	2	from your vocal cords. It's called the
3	we have to circulate cold water, you know,	3	down to its first branch point is the
4	through the catheter while we do it. It	4	trachea, and that's the big airway. You can
5	also has a so, therefore, it also has a	5	feel it, you know, right right in your
6	chilling a chiller in the console. And	6	throat.
7	then, of course, it has a user interface,	7	When that comes when that gets
8	you know, which is a software program.	8	down into the middle of the chest, it
9	The console runs the dNerva	9	branches into two main two large
10	catheter, and the catheter is the active	10	branches, and those are call the right and
11	you know, is the therapeutic part of the	11	left mainstem bronchus, and then the
12	product, and the dNerva catheter is used by	12	mainstem bronchus, in turn, branch into
13	an interventional pulmonologist. The	13	multiple other airways, and then they keep
14	interventional pulmonologist takes the	14	subdividing into and goes down into all
15	dNerva catheter, and he puts it through the	15	of the little billions of airways, you know,
16	working channel of a flexible bronchoscope,	16	out in the lungs.
17	you know, and flexible bronchoscopes are	17	Q. Okay. So, the the bronchus the
	something that interventional pulmonologists	18	mainstem bronchus is outside of the lungs?
18			A. Was assisted and to share the facility of the formula
	have used for years.	19	A. Yes, you're not technically in the lungs
18	have used for years. It's still it's a flexible	19 20	yet.
18 19	-		
18 19 20	It's still it's a flexible	20	yet.
18 19 20 21	lt's still it's a flexible catheter that goes down you know, in	20 21	yet. Q. Okay. And then the bronchus stems out from
18 19 20 21 22	It's still it's a flexible catheter that goes down you know, in through your mouth, down the trachea, and	20 21 22	<ul><li>yet.</li><li>Q. Okay. And then the bronchus stems out from the mainstem bronchus and goes into the lung fields?</li><li>A. Yeah, it goes it goes basically, you</li></ul>
18 19 20 21 22 23	It's still it's a flexible catheter that goes down you know, in through your mouth, down the trachea, and they can look around inside the lungs with	20 21 22 23	<ul><li>yet.</li><li>Q. Okay. And then the bronchus stems out from the mainstem bronchus and goes into the lung fields?</li></ul>

	Page 18		Page 20
1	have secondary bronchi and then tertiary.	1	medical procedure itself. What was that
2	You know, it's just dividing and dividing	2	again?
3	and dividing.	3	A. Targeted lung denervation.
4	Q. And describe for me, again, where the	4	Q. Okay. And where is targeted lung
5	where within in the body the dNerva catheter	5	denervation performed? Like in what kind of
6	is used?	6	setting?
7	A. In the right and left mainstem bronchus, in	7	A. It's in a hospital, a pulmonology procedure
8	just those first major divisions.	8	room. It's in a special room that where
9	Q. Okay.	9	hospitals do these bronchoscopies
10	A. It never goes down into the lung fields.	10	procedures.
11	Q. And the what what condition is Holaira	11	Q. What who performs the procedure?
12	seeking approval from the FDA to treat with	12	A. An interventional pulmonologist.
13	this device?	13	Q. What's an interventional pulmonologist?
14	A. Well, COPD, Chronic Obstructive Pulmonary	14	A. Well, it goes it kind of goes back to the
15	Disease, is the disease process, and in	15	same thing about when I talked about
16	patients that have COPD, COPD is	16	interventional cardiologist.
17	characterized by overactive nerves, you	17	Until recently, until literally a
18	know, that that are causing and these	18	couple years ago, the the highest level
19	overactive nerves cause the airways to be	19	of certification within the field of
20	constricted, you know, kind of in spasms, so	20	pulmonary was a Board-certified
21	to speak, and up until this point in time,	21	pulmonologist, and these were doctors that
22	the way COPD patients have been treated are	22	did bronchoscopies, you know, just that were
23	with inhalers.	23	diagnostic, you would go and look around to
24	And, of course, you see this on	24	see what was in the lungs.
25	television all the time. Spiriva is the	25	But in the last over the last
	Page 19		Page 21
1	leading selling pulmonary drug in the world,	1	number of few years, similar to what had
2	maybe the first or second leading selling	2	happened 15 or 20 years ago in cardiology, a
3	drug of any kind in the world. You know,	3	new field has arisen of interventional
4	the inhaler that you see people who can't	4	pulmonology, where pulmonologists can do
5	breathe puff on.	5	additional training to become skilled at
6	And what that the way that	6	actually doing invasive procedures, and this
7	inhaler works, it goes down, and it	7	group are what we refer to as the
8	literally is trying to block the nerves, you	8	interventional pulmonologists, and to be
9	know, that go to the lungs so the airways	9	and that is a fully now recognized Board
10	can open up. What we're trying to do, we're	10	certification-required subspecialty of
11	going in, and we're by using this	11	pulmonology, where they literally have to do
12	RF energy and the right and left mainstem	12	a two-year fellowship after training all the
13	bronchus, we're trying to ablate those	13	previous stuff, do two additional years of
14	nerves, so that we so that we can	14	interventional pulmonology and then pass the
	permanently get a permanent dilation, so	15	Boards to be a card-carrying credentialed
15	that you have a permanent bronchodilation.	16	interventional pulmonologist, and they
15 16		17	they do everything well, I shouldn't say
	So, it would become an alternative therapy		
16	So, it would become an alternative therapy to drugs or even an additive, where we	18	they do everything.
16 17	• •		they do everything. They do an awful lot. They do a
16 17 18	to drugs or even an additive, where we	18	
16 17 18 19	to drugs or even an additive, where we actually know it would be an additive to	18 19	They do an awful lot. They do a
16 17 18 19 20	to drugs or even an additive, where we actually know it would be an additive to drugs, and there's a reason for that, to	18 19 20	They do an awful lot. They do a lot of different procedures now just through
16 17 18 19 20 21	to drugs or even an additive, where we actually know it would be an additive to drugs, and there's a reason for that, to benefit.	18 19 20 21	They do an awful lot. They do a lot of different procedures now just through the bronchoscope that used to require
16 17 18 19 20 21 22	to drugs or even an additive, where we actually know it would be an additive to drugs, and there's a reason for that, to benefit.  Q. Let's talk about the a little bit more	18 19 20 21 22	They do an awful lot. They do a lot of different procedures now just through the bronchoscope that used to require open-chest surgery. You know, the same

	_		_
	Page 22		Page 24
1	airways to resecting tumors to, you know,	1	included; and then there's what's called a
2	removing foreign bodies, just lots of	2	closed, where it's just me with the Board of
3	things.	3	Directors period. You know, that's the part
4	So, we as a our procedure,	4	where you talk about things like
5	targeted lung denervation, is one of an	5	compensation and confidential stuff that you
6	array of things that they do.	6	wouldn't want to have other people sitting
7	Q. You mentioned that how many of roughly	7	in on.
8	how many interventional pulmonologists are	8	Q. During the
9	there in the United States, if you know?	9	A. Open session.
10	A. Today, there are about 150 roughly, about	10	Q open session, if you'd flip to page
11	150. So, you can kind of think of it as	11	the twelfth slide in, which is has the
12	each state if all states were average	12	Bates number on the bottom right,
13	size, there would be two or three in a	13	Holaira 627?
14	state.	14	A. Yep.
15	It will grow. You know, the the	15	Q. There is a appears to be a discussion
16	fellowship programs that train them are	16	about branding activities?
17	turning out about, you know, seven or eight	17	A. Yepyes.
18	new ones a year, you know, in the US, you	18	Q. What was the purpose of this the
19	know, the specialized places that are	19	inclusion of this slide in the presentation?
20	formally training them. So, that number	20	A. Well, I was I introduced it as you
21	will I expect will slowly grow.	21	noticed on the first page, the company was
22	Q. Okay. Let's discuss a little bit how the	22	still called Innovative Pulmonary Solutions
23	company changed names from IPS to Holaira,	23	at this time, but I wanted to and I
24	and to assist with the the discussion,	24	this this was really my first Board
25	I'll mark and hand you an exhibit.	25	meeting, you know, because I was hired in
	Page 23		Page 25
			3
1	A. Sure.	1	· ·
1 2	A. Sure. (Exhibit Number 1 was marked.)	1 2	September, and this was December, and so, this was my very first Board meeting that I
		1	September, and this was December, and so,
2	(Exhibit Number 1 was marked.)	2	September, and this was December, and so, this was my very first Board meeting that I
2	(Exhibit Number 1 was marked.) BY MR. HANSEN:	2 3	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point
2 3 4	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been	2 3 4	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the
2 3 4 5	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1.	2 3 4 5	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to
2 3 4 5 6	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document?	2 3 4 5 6	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.
2 3 4 5 6 7	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document? A. Yes.	2 3 4 5 6 7	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.  Now, you have to realize this was a
2 3 4 5 6 7 8	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document? A. Yes. Q. What is it?	2 3 4 5 6 7 8	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.  Now, you have to realize this was a Board of Directors that had been with this
2 3 4 5 6 7 8	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document? A. Yes. Q. What is it? A. This is these are documents that we put	2 3 4 5 6 7 8 9	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.  Now, you have to realize this was a Board of Directors that had been with this company for four years, you know, and so,
2 3 4 5 6 7 8 9	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document? A. Yes. Q. What is it? A. This is these are documents that we put together not long after I took over as CEO	2 3 4 5 6 7 8 9	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.  Now, you have to realize this was a Board of Directors that had been with this company for four years, you know, and so, they were pretty you know, they were very
2 3 4 5 6 7 8 9 10	(Exhibit Number 1 was marked.) BY MR. HANSEN: Q. Dr. Wahr, you've been handed what's been marked as Wahr Exhibit 1. Do you recognize this document? A. Yes. Q. What is it? A. This is these are documents that we put together not long after I took over as CEO to help guide, you know, our renaming	2 3 4 5 6 7 8 9 10	September, and this was December, and so, this was my very first Board meeting that I led, and I had already decided by that point that I wanted to change the name of the company, and this was my starting to socialize that concept to the Board.  Now, you have to realize this was a Board of Directors that had been with this company for four years, you know, and so, they were pretty you know, they were very familiarized with the previous name, and so,
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### Page 26 Page 28 1 company from Seattle, where it had been the 1 know, we're going to -- you know, our 2 materials that are shown publicly, you know, 2 first four years, to Minneapolis. 3 we're going to rethink. 3 So, we were moving the company, and 4 Q. Why did you want to move away from the IPS 4 it's going to be a new entity, you know, 5 5 here in Minneapolis, of which the people in name? 6 A. Well, this was my third time around the 6 Minneapolis didn't even know -- you know, 7 track, you know, with a company, and so, 7 there was no memory of the old name. So, it 8 while I don't consider myself a marketing 8 was the perfect time to change the name. 9 person, I'm used to working with marketing 9 Q. On the -- on slide 12, the third bullet 10 people, and I do believe what they say. 10 point down says: Need image that 11 And, to me, there were a couple --11 demonstrates we are different from 12 there was a few problems with Innovative 12 competition, relevant to the target 13 Pulmonary Solutions. 13 audiences and credible. 14 Q. What were those problems? 14 Do you see that? 15 A. Well, one is -- is that marketing people 15 A. Yep. 16 will tell you that they really -- they would 16 Q. What was meant by "demonstrates we are 17 never recommend the name of a company that 17 different from competition"? goes much more than two or three syllables. 18 A. This is a Class 3 device, first time -- and 18 19 Innovative Pulmonary Solution had 11. It's 19 it's very novel, first time anything like too many words, you know, to be efficient, 20 this has ever been done in humans. You want 20 21 21 a name that is not confused with anything 22 22 And the second thing is is that it else, you know, that is totally unique, that 23 was so long that you couldn't even fit it 23 will -- a new word -- a new word, you know, 24 into some URL boxes. You know, when you go 24 created that will become the image of your 25 to type in your emails and stuff, it 25 product, you know, that no physician will Page 27 Page 29 1 wouldn't fit, and, you know, you'd run out 1 ever find confusing. 2 of space, and then you were just stuck on a 2 You know, that's fundamental --3 lot of forms. I found that particularly 3 that's what's fundamental. You don't -- you 4 irritating. 4 know, when the Google people decided to have 5 The third thing was it was just a -- a search engine that you could find 5 6 kind of a sentence. You know, it wasn't 6 anything on the Internet in 100th of a 7 really a unique word. Marketing people and 7 second, they wanted a word that nobody had 8 8 seen before, and that's -- they created the branding people want you to create your own 9 unique word. Because it wouldn't fit into 9 word "Google," which now everybody thinks 10 URL addresses, the company started calling 10 has been around for a century, when, in 11 itself IPS for short, which is a 11 fact, it's only been around for ten years. 12 three-letter acronym, but the problem with 12 because it was brand new. That's what 13 IPS was, one thing, marketing people don't 13 you're trying to do. 14 like acronyms, but, number two, it was 14 Q. After this Board meeting, did the -- did the already trademark. I mean, in fact, it's 15 IPS continue in the process of rebranding? 15 16 trademarked by about 15 people worldwide for 16 A. Yes, the Board -- when I introduced this, 17 17 all kinds of different things. There's the Board gave me -- they said, yes, we're 18 absolutely nothing unique about IPS, you 18 interested in having this done, go do it. 19 know, as a three-letter thing -- thing out 19 Q. And what -- did Holaira, or IPS at the time, 20 20 retain any third-party entities to assist in 21 So -- so, for all of those reasons, 21 that process? 22 I felt we needed -- and since the company --22 A. Yep, it's on here. You know, I had already 23 I had just become the new CEO, part of 23 started the process, you know, with a 24 becoming the new CEO was we were going to 24 marketing consultant named Lorraine Wright 25 move the company -- we decided we'd move the on the slide, and Lorraine, in turn, was

İ	Page 30		Page 32
1	working with a marketing company called	1	entitled: Naming Considerations?
2	Six Degrees.	2	A. Yes.
3	Q. Okay.	3	Q. The first bullet point says: The new name
4	A. Lorraine is not an employee of Six Degrees.	4	must be shorter, simpler, fewer syllables.
5	They are two different things. So, Lorraine	5	What is that in reference to?
6	is our marketing person basically.	6	A. That's in reference to our previous name of
7	MR. HANSEN: Let's mark that	7	Innovative Pulmonary Solutions that had 11
8	exhibit.	8	syllables.
9	(Exhibit Number 2 was marked.)	9	Q. Okay. If you turn to Holaira 50, which is
10	BY MR. HANSEN:	10	another couple of slides in, it's entitled:
11	Q. Before we get into this next exhibit,	11	Metrics for Naming?
12	Dr. Wahr, you mentioned that Lorraine Wright	12	A. Yep.
13	is not an employee?	13	Q. Can you describe what the purpose of this
14	A. Right.	14	slide is?
15	Q. Although she's not an employee, is she	15	A. Yes, this is a this was a slide that
16	treated like as if she's an employee with	16	Six Degrees put together. I would say that
17	respect to her job function?	17	it's pretty much a boilerplate that
18	A. Yes, she's our she's our only marketing	18	marketing firms use for how you you know,
19	person we have. She does 100 percent of our	19	it was not unique to us. It was unique to
20	marketing activities, which, because we're	20	what they do every time regardless of the
21	still a pre-revenue company, clinical stage,	21	client, in terms of, when you start through,
22	as I call it, we don't really have a need	22	how do you invent a new name or new word.
23	yet for a full-time marketing executive.	23	By the way, this is kind of I
24	So so, that's why she's still at	24	found this found this fascinating when I
25	consultant status. I would estimate she	25	got into this. There is no word in
	Page 31		Page 33
1	probably spends about 50 percent of her time	1	Webster's Dictionary that's not trademarked.
2	working with us, but she has some other	2	So, you can't name the company anything of a
3	clients, but she's our sole person, and she	3	word that exists. There whatever the
4	carries a Holaira business card, has a	4	thousands of words, they're all trademarked.
5	Holaira has a Holaira email address, and	5	So, the only way you can create a
6	she she is our she functions as if	6	new trademark is to come up with a brand new
7	she's a full-time employee. All	7	word. Isn't that amazing? There are more
8	marketing-type questions, you know, that	8	trademarks, in fact, than there are words in
9	flow through or inquiries from the	9	the dictionary. So, you have to I
10	Website flow through her.	10	thought that was pretty pretty amazing,
11	Q. Let's turn to Exhibit 2.	11	you know, which is why you've got to get
12	A. Okay.	12	creative people to do this stuff.
13	Q. Have you seen Exhibit 2 before, Dr. Wahr?	13	Now now, but these things here
14	A. Yes.	14	are are what they say are are the
	O What is Eubihit 22	15	different categories of how you think about
15	Q. What is Exhibit 2?		it you know as you so shout it as a team
15 16	A. These are the materials that were put	16	it, you know, as you go about it as a team,
15 16 17	A. These are the materials that were put together by Six Degrees working with	16 17	you know, association, different, clear,
15 16 17 18	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the	16 17 18	you know, association, different, clear, pronounceable, memorable
15 16 17 18 19	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the the documents we worked off of in our	16 17 18 19	you know, association, different, clear, pronounceable, memorable (Reporter clarification.)
15 16 17 18 19 20	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the the documents we worked off of in our company meetings as we started through a	16 17 18 19 20	you know, association, different, clear, pronounceable, memorable (Reporter clarification.) THE WITNESS: The categories were
15 16 17 18 19 20 21	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the the documents we worked off of in our company meetings as we started through a methodical process of of considering	16 17 18 19 20 21	you know, association, different, clear, pronounceable, memorable (Reporter clarification.) THE WITNESS: The categories were product association, different, clear,
15 16 17 18 19 20 21 22	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the the documents we worked off of in our company meetings as we started through a methodical process of of considering various alternatives for renaming the	16 17 18 19 20 21 22	you know, association, different, clear, pronounceable, memorable (Reporter clarification.) THE WITNESS: The categories were product association, different, clear, pronounceable, memorable, positive and
15 16 17 18 19 20 21	A. These are the materials that were put together by Six Degrees working with Lorraine Wright that were literally the the documents we worked off of in our company meetings as we started through a methodical process of of considering	16 17 18 19 20 21	you know, association, different, clear, pronounceable, memorable (Reporter clarification.) THE WITNESS: The categories were product association, different, clear,

	Page 34		Page 36
1	BY MR. HANSEN:	1	respiration, open you know, "open"
2	Q. And we may have discussed this already, but	2	meaning open airway.
3	why was it important why was it an	3	So and then they and then you
4	important metric for the name to be	4	take each of those one by one and start to
5	different from the competition?	5	create words that might be related or convey
6	A. Because we had we have a novel,	6	or be related to these general categories.
7	first-in-the-world-ever-done product. We	7	Q. So, for example, air-centric?
8	want we wanted no confusion that this had	8	A. Yes.
9	any similarity to anything else. It had to	9	Q. What what impact does a word being
10	be totally unique, the word, to imply the	10	air-centric have on the word itself?
11	fact that this also was a totally unique	11	A. Well, I mean, each of these would would
12	product.	12	commonly you know, would you work
13	Q. If you turn to the slide just before the one	13	around that. You start with that concept
14	that we're on, there's an identification of	14	of, say, air, and then you work around it
15	a number of products that treat pulmonary	15	and try to mold words, you know, that might
16	conditions, correct?	16	encompass it.
17	A. Yes.	17	Q. Okay. And why if you know, why were
18	Q. Why were you considering these other	18	these specific categories identified as
19	entities and names in this process?	19	potential categories for words?
20	A. Because we knew that these were names of	20	A. Because they related they all had
21	products that interventional cardiologists	21	something to do with our procedure, you
22	were already familiar with and using, and we	22	know, what we do.
23	wanted to make sure that ours was you	23	Q. If you turn we're going to jump around
24	know, was not similar to any of them. I	24	just a little bit, but if you turn to the
25	mean, again, getting back to the different	25	third from last page of the slide deck,
	Page 35		Page 37
1	and unique category.	1	which is Holaira 111, there's a short list
2	Q. I think you said interventional	2	of names.
3	cardiologists	3	Were there more names considered
4	A. Oh, did I say that?	4	than just this this short list?
5	Q do you mean pulmonologists?	5	A. Oh, yes, yeah, yeah. I mean, there were
6	A. I continue to do that, because I used to be	6	yeah, there were many, and in all of those
7	one, but, yeah, interventional	7	categories, there were a lot in each
8	pulmonologists. Glad Marty isn't here.	8	category.
9	Q. If you turn to slide Holaira 56, it's	9	What these what these marketing
10	entitled: Naming Categories?	10	people do, they sit down and and they
11	A. Yeah yes.	11	provide you with a list to stimulate, you
	Q. Can you describe for me what what this	12	know, all various renditions within these
12	slide reflects and what these naming	13	categories.
12 13	sinds remote and what these haming		Q. What what process was used to take the
	categories mean?	14	
13	C	14 15	longer list and winnow it down to the
13 14	categories mean?		longer list and winnow it down to the shorter list?
13 14 15	categories mean?  A. Well, the way the marketing team helps	15	· ·
13 14 15 16	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is	15 16	shorter list?
13 14 15 16 17	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of	15 16 17	shorter list?  A. We had we had a group meeting, where we
13 14 15 16 17	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of concepts, and they generally name, when	15 16 17 18	shorter list?  A. We had we had a group meeting, where we had there were really there were
13 14 15 16 17 18	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of concepts, and they generally name, when they you know, in doing this, they come	15 16 17 18 19	shorter list?  A. We had we had a group meeting, where we had there were really there were really, you know, a smaller group of people,
13 14 15 16 17 18 19 20	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of concepts, and they generally name, when they you know, in doing this, they come up with anatomic things or physiologic	15 16 17 18 19 20	shorter list?  A. We had we had a group meeting, where we had there were really there were really, you know, a smaller group of people, four or five people, that that put the
13 14 15 16 17 18 19 20 21	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of concepts, and they generally name, when they you know, in doing this, they come up with anatomic things or physiologic things or structures, you know, that are	15 16 17 18 19 20 21	shorter list?  A. We had we had a group meeting, where we had there were really there were really, you know, a smaller group of people, four or five people, that that put the most time into this.
13 14 15 16 17 18 19 20 21 22	categories mean?  A. Well, the way the marketing team helps stimulate growth I mean, group-think is to provide categories, you know, of concepts, and they generally name, when they you know, in doing this, they come up with anatomic things or physiologic things or structures, you know, that are that have something to do with what you're	15 16 17 18 19 20 21 22	shorter list?  A. We had we had a group meeting, where we had there were really there were really, you know, a smaller group of people, four or five people, that that put the most time into this.  It was myself; it was Marty Mayse;

	Page 38		Page 40
1	there was also a larger group of some of the	1	going in and denervating the nerves in the
2	other employees in the company that were	2	right and left mainstem bronchus, and 100
3	also brought in to comment on on just gut	3	percent of all the nerves that go to the
4	reaction, you know you know, what kinds	4	lungs go in are in the walls of that
5	of things that started to shake out as	5	right and left mainstem bronchus. By
6	people's favorites.	6	denervating, we could dilate all the
7	Q. Let's flip back in the slide deck to	7	airways, the whole thing, the whole lung,
8	Holaira 65, which is an air-centric name,	8	and so, I love the concept that we'll be the
9	and the name is Holaira?	9	first company that can truly deliver therapy
10	A. Yep.	10	to the whole lung, you know, and so and,
11	Q. Ultimately, this is the name that the	11	whereas, I would say pharmaceuticals deliver
12	company selected, right?	12	therapy to only part of the lung. We're the
13	A. Yes.	13	whole lung.
14	Q. Why did the company select the name Holaira?	14	And so, the whole focus here was on
15	A. The there were there were several	15	whole, you know, W-H-O-L-E, but the
16	reasons that this one, as more and more	16	marketing people, being the clever way they
17	discussion went, rose to the top, and the	17	are, said, let's spell it H-O-L, because
18	one that I liked the best was that the	18	it's pronounced exactly the same way and
19	fundamental reason why I think our product	19	it's clever. Now, you're looking like a
20	is going to be so exciting in the	20	unique word, as opposed to W-H-O-L-E, which
21	marketplace is because the current standard	21	is a word that everybody recognizes.
22	of care for this disease is are these	22	So, shorten it to Hol, H-O-L. So
23	inhalers, these drugs, you know, that people	23	air to the whole lung, and that really
24	breathe breathe in, but what's known	24	started to resonate to people as really a
25	by both all physicians know this, and the	25	a cool thing.
		25	a coortining.
	D 20		
	Page 39		Page 41
1	Page 39 pharmaceutical companies themselves	1	Page 41 The second thing was that was
1 2	_	1 2	_
	pharmaceutical companies themselves		The second thing was that was
2	pharmaceutical companies themselves acknowledge it, is that the Achilles heel of	2	The second thing was that was that, as the people started doing reviews,
2 3	pharmaceutical companies themselves acknowledge it, is that the Achilles heel of drugs that they don't talk about for	2 3	The second thing was that was that, as the people started doing reviews, there's very, very few things in all of
2 3 4	pharmaceutical companies themselves acknowledge it, is that the Achilles heel of drugs that they don't talk about for treating lung disease is that, when they	2 3 4	The second thing was that was that, as the people started doing reviews, there's very, very few things in all of medicine, you know, whether it's drugs or
2 3 4 5	pharmaceutical companies themselves acknowledge it, is that the Achilles heel of drugs that they don't talk about for treating lung disease is that, when they breathe these drugs in and they can only	2 3 4 5	The second thing was that was that, as the people started doing reviews, there's very, very few things in all of medicine, you know, whether it's drugs or procedures or or words or anything that
2 3 4 5 6	pharmaceutical companies themselves acknowledge it, is that the Achilles heel of drugs that they don't talk about for treating lung disease is that, when they breathe these drugs in and they can only be given by by inhalation. They can't be	2 3 4 5 6	The second thing was that was that, as the people started doing reviews, there's very, very few things in all of medicine, you know, whether it's drugs or procedures or or words or anything that begin with the letter H. H is really rare.
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	Page 42		Page 44
1	ho.	1	if you look at the last four or five years
2	Anyway, but that is a negative	2	of medical device company names, there have
3	term, and and so, we struggled with the	3	been a lot of Vs. There's a lot of
4	fact that it would have too strong, you	4	companies out there that start with V, and
5	know, a differential, you know, in terms of	5	so, for that reason, that was a
6	a word being thrown into into medicine,	6	discriminating that was probably one of
7	and so but the marketing people actually	7	the main reasons why we moved away from that
8	kind of liked that, because it gave it more	8	at the end of the day. In discussion, in
9	of an edge, you know, of uniqueness. And,	9	fact, my first company had begun with a V,
10	by the way, nobody really thinks that, you	10	Velocimed, and that was a bias to me. I
11	know, as our testing they really see	11	didn't want to do another V company.
12	"whole," you know, is where they go.	12	Q. And why didn't you select Apaira?
13	Q. Can you describe for me how the company	13	A. Again, I think that it was a there are A
14	pronounces its name?	14	companies out there, and we thought that
15	A. Yeah, it's Hol, H-O-L, hyphen, second	15	we thought that there was another company
16	syllable, is air, A-I-R, and the last	16	out there called Alero, you know, that we
17	syllable is A. Three syllable, where it's	17	thought that looked a little close to, so we
18	H-O-L, then second syllable A-I-R, another	18	thought Apaira was close to some other
19	syllable A, and we really differentiated	19	competitors.
20	we really wanted that differentiated all the	20	Q. And when you say "Alero," are you talking
21	way to the point that on the that, on the	21	about the product sold by Boston Scientific?
22	logo, we put an umbrella of dots over the	22	A. No.
23	word A-I-R to differentiate the word "air"	23	Q. What
24	and separate it from the syllable H-O-L, so	24	A. It's a pharma it's a pharma drug.
25	there was no no to really call that	25	Q. And how do you spell that?
	Page 43		Page 45
1	Page 43 out, to get the word Hol on there, H-O-L,	1	Page 45  A. A-L-E-R-O, I think is the name of it is
1 2	_	1 2	
	out, to get the word Hol on there, H-O-L,		A. A-L-E-R-O, I think is the name of it is
2	out, to get the word Hol on there, H-O-L, and you've seen the it's on the business	2	A. A-L-E-R-O, I think is the name of it is how it's spelled.
2	out, to get the word Hol on there, H-O-L, and you've seen the it's on the business cards. You've seen the logo.	2 3	A. A-L-E-R-O, I think is the name of it is how it's spelled.  Q. Ultimately, you went with one of the
2 3 4	out, to get the word Hol on there, H-O-L, and you've seen the it's on the business cards. You've seen the logo.  Q. Going back to the the short list of of	2 3 4	<ul> <li>A. A-L-E-R-O, I think is the name of it is how it's spelled.</li> <li>Q. Ultimately, you went with one of the air-centric names, Holaira?</li> </ul>
2 3 4 5	out, to get the word Hol on there, H-O-L, and you've seen the it's on the business cards. You've seen the logo.  Q. Going back to the the short list of of names, there were at the back of the	2 3 4 5	<ul> <li>A. A-L-E-R-O, I think is the name of it is how it's spelled.</li> <li>Q. Ultimately, you went with one of the air-centric names, Holaira?</li> <li>A. Yes.</li> </ul>
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	Page 46		Page 48
1	Q. Do you know you mentioned that there's a	1	can use it.
2	lot of words out there with "air" in it?	2	THE WITNESS: Okay.
3	A. Yes.	3	BY MR. HANSEN:
4	MR. WALZ: Objection, foundation.	4	Q. Dr. Wahr, what what examples are on that
5	MR. HANSEN: To what?	5	piece of paper?
6	MR. WALZ: How does he know that	6	A. Well, there's Singulair, Xolair, VitalAire
7	there are a lot of products out there that	7	and Alere, A-L-E-R-E.
8	have "air" in it? You can lay the	8	Q. Turning back to my question about Alair, the
9	foundation. I don't know how he knows that.	9	product sold by Boston Scientific, what
10	MR. HANSEN: He just testified that	10	consideration, if any, did you take of the
11	he knows it.	11	existence of that name when deciding to use
12	MR. WALZ: How do you know it?	12	the name Holaira?
13	BY MR. HANSEN:	13	A. We wanted to make sure that we were very
14	Q. Okay. Dr	14	different from any other word, and I would
15	A. I've seen them a pulmonary meetings and	15	say that that fell into that category. You
16	generally follow the literature.	16	know, we were we as you saw in the
17	Q. Okay. So, you work at a company that has a	17	previous slide, we got the list of the other
18	product is developing a product in the	18	leading or I shouldn't say leading, but
19	pulmonary space, correct?	19	the known products that are used by
20	A. Yes.	20	interventional pulmonologists, and so, we
21	Q. And through going to meetings in the	21	looked at that entire list and said, are we
22	pulmonary space, you're aware of other	22	different than all of these words, you know,
23	company names?	23	and we were we were confident we were
24	A. And product names, yeah yes.	24	different from all of these words, because
25	Q. And is that how you're aware of other	25	nobody had anything that looked like Hol,
	Page 47		Page 49
1	A. Yes.	1	H-O-L, at the beginning of the word.
2	Q names using the word "air"?	2	Q. What why did you want to be different
3	A. Yes.	3	from Alair?
4	Q. And are those other product names that are	4	A. Because eventually because we have a
5	in your mind in the pulmonary space?	5	unique product, and we want our our
6	A. Yes.	6	physicians, who are our main customers,
7	Q. Can you recall any of them?	7	to to have no confusion about what we are
8	A. Xolair.	8	doing.
9	Q. What does Xolair do?	9	Q. Let's turn to the the development of the
			•
10	A. It's a drug.	10	Holaira products.
11	A. It's a drug. Q. What are you aware of the term "Alair"?	10 11	Holaira products. I understand, and certainly tell me
11 12	<ul><li>A. It's a drug.</li><li>Q. What are you aware of the term "Alair"?</li><li>A. Yes.</li></ul>	10 11 12	Holaira products. I understand, and certainly tell me if I'm wrong, I understand that the Holaira
11 12 13	<ul><li>A. It's a drug.</li><li>Q. What are you aware of the term "Alair"?</li><li>A. Yes.</li><li>Q. Sold by Boston Scientific?</li></ul>	10 11 12 13	Holaira products. I understand, and certainly tell me if I'm wrong, I understand that the Holaira product is not commercially available in the
11 12 13 14	<ul> <li>A. It's a drug.</li> <li>Q. What are you aware of the term "Alair"?</li> <li>A. Yes.</li> <li>Q. Sold by Boston Scientific?</li> <li>A. Yes.</li> </ul>	10 11 12 13 14	Holaira products.  I understand, and certainly tell me if I'm wrong, I understand that the Holaira product is not commercially available in the United States?
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1	we're doing is we're doing a three	1	everything has to be defined and done, and
2	three-stage development program, which has	2	then that's it, and that would be the trial
3	began with Phase 1 clinical trials. We	3	in which eventual approvals are based is
4	finished that.	4	Phase 3.
5	We're in what are now called	5	Q. You mentioned earlier that there are three
6	Phase 2 clinical trials, and then if our	6	classes of products within the FDA?
7	data looks good in the Phase 2 trials, we'll	7	A. Right.
8	move on to what's called Phase 3 clinical	8	Q. What class of product is the Holaira System?
9	trials, which would be the pivotal trial.	9	A. It's Class 3, and generally Class 3 products
10	We're in the middle of Phase 2 right now.	10	are the products where you would go through
11	Q. Why is the company undertaking that process?	11	this type of extensive clinical testing
12	A. Well, the product is because the product	12	program.
13	is novel and has never been done before, you	13	Class 1 products, for example, may
14	need to be very careful, you know, as you	14	not need any clinical testing at all. I
15	work your way through the development	15	mean, they could literally just in
16	process, that you make sure that that	16	humans, they could just be developed on a
17	your product is safe, first of all, and the	17	benchtop somewhere and get approval.
18	way that's done in the eyes of the	18	Generally, Class 2 products are
19	regulatory authorities is they will approve	19	somewhere in between. Generally, they
20	you to treat a small number of patients.	20	require a some human testing in a trial,
21	You treat those patients in the	21	but for sure Class 3 products require, you
22	Phase 1 trial, and then if that looks good,	22	know, an extensive development program since
23	then they'll give you a larger number of	23	it's never been done before, and you've
24	patients you can treat, which is basically	24	really got to prove that safety thing
25	Phase 2 trials. If that data looks good,	25	before before they're going to let it go
	Paga 51		
	Page 51		Page 53
1	-	1	_
1 2	and basically Phase 1 and Phase 1 trials	1 2	out on the market.
	and basically Phase 1 and Phase 1 trials are really focused on safety. You know,		_
2	and basically Phase 1 and Phase 1 trials are really focused on safety. You know, they the way this works, they first want	2	out on the market.  Q. What indication is being sought for the Holaira products?
2 3	and basically Phase 1 and Phase 1 trials are really focused on safety. You know,	2	out on the market.  Q. What indication is being sought for the
2 3 4	and basically Phase 1 and Phase 1 trials are really focused on safety. You know, they the way this works, they first want to know that you're not going to hurt anybody, and then if they if you pass	2 3 4	<ul> <li>out on the market.</li> <li>Q. What indication is being sought for the Holaira products?</li> <li>A. Patients of patients with moderate to severe COPD.</li> </ul>
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1	our scientific data. I mean, it's the name	1	in the interventional pulmonary space, to
2	of it's the name of the system and the	2	get their feedback and input and, you know,
3	name of the company, so it's on that stuff.	3	reaction to what we're doing.
4	Q. At what events, if any, has Holaira	4	So there's been a number of those
5	presented to physicians?	5	meetings as well.
6	A. Publicly, public presentations of our	6	Q. And in those meetings you use the name
7	company to date has only happened one time,	7	Holaira?
8	and that was our coming-out party for	8	A. Yes.
9	public presentation was at the European	9	Q. Approximately how many private presentations
10	Respiratory Society meeting in Munich,	10	would you say that Holaira has had?
11	Germany last fall.	11	A. Over since I have been CEO, those types
12	That's the only public	12	of meetings, fairly formal meetings, I would
13	presentation, you know, at a at a trade	13	say at least 50.
14	show, and we did not have a booth. It	14	Q. And are those to interventional
15	was we were start of the scientific	15	pulmonologists in the United States or
16	agenda. We had abstracts that were accepted	16	elsewhere?
17	for presentation, and we did one evening	17	A. Both Europe and the United States.
18	symposium, you know, where we summarized our	18	Q. And within the United States, how many of
19	product for the you know, for the	19	those types of meetings have you had?
20	attendees.	20	A. Probably about a third of them have been
21	Q. And what were the attendees? Who was the	21	with US docs; two-thirds of them with
22	audience at that	22	European physicians.
23	A. Primarily interventional pulmonologists, as	23	Q. Has
24	well as, in general, pulmonologists. That	24	A. Our US our US we have no US clinical
25	would that made up the majority of the	25	sites yet. You know, we're hopeful we'll
	Page 55		
	rage 33		Page 57
1	_	1	
1 2	audience, and then there were industry	1 2	have some later, you know, in the not too
2	audience, and then there were industry people there as well.	2	have some later, you know, in the not too distant future.
	audience, and then there were industry people there as well.  You know, whenever a new product is	2 3	have some later, you know, in the not too
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1	clinical trial now is published in a	1	yet, but does the company have some sense as
2	peer-reviewed journal called Thorax.	2	to what sales process it intends to employ
3	Q. Has are you aware of any confusion	3	when the product becomes commercially
4	between Holaira and Alair?	4	available?
5	A. None.	5	A. Yes. I mean, yes. I mean, we don't have a
6	Q. Are you aware of any confusion between or	6	detailed plan, because that's out there in
7	about Holaira's affiliation or lack of	7	the future, you know, a number of years,
8	affiliation with Boston Scientific?	8	but but at a high level, yes, and our
9	A. None.	9	plan for commercialization will be a direct
10	Q. Let's turn now, Dr. Wahr, to the sales	10	sales force.
11	process for the Holaira product.	11	Q. And what do you know by a direct sales
12	First, who is the the target	12	force?
13	customer for the Holaira products?	13	A. Meaning
14	A. The interventional pulmonologists.	14	Q. Can you describe that?
15	Q. Why is that?	15	A. Meaning we will not use distributors or
16	A. Because our product will will be labeled	16	other third-parties to to sell our
17	that it is only for use by an interventional	17	product.
18	pulmonologist. That will be and then	18	Q. And how would the what's the concept of
19	even if you are a Board-certified	19	how the direct sales force would go about
20	pulmonologist, just that by itself is not	20	selling the product?
21	sufficient. You will also have to go	21	A. It would be it would be direct from I
22	through and finish the formal training	22	mean, it would be direct to the
23	program.	23	interventional pulmonologists. It would be
24	Q. I'll dig into the formal training program in	24	direct point-of-contact with the
25	just a minute.	25	interventional pulmonologists.
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1	A. Okay.	1	Q. You mentioned that that's a few years out.
2	0. 0	l .	
3	Q. But you mentioned it will be labeled?	2	Do you have an estimate as to how
3	Q. But you mentioned it will be labeled?     A. Yeah.	3	Do you have an estimate as to how far out that is?
4	•		•
	A. Yeah.	3	far out that is?
4	A. Yeah. Q. What what does that mean, "it will be	3 4	far out that is?  A. The the
4 5	A. Yeah.  Q. What what does that mean, "it will be labeled"?	3 4 5	far out that is?  A. The the
4 5 6	<ul><li>A. Yeah.</li><li>Q. What what does that mean, "it will be labeled"?</li><li>A. Well, the the when the FDA approves a</li></ul>	3 4 5 6	far out that is?  A. The the
4 5 6 7	<ul> <li>A. Yeah.</li> <li>Q. What what does that mean, "it will be labeled"?</li> <li>A. Well, the the when the FDA approves a product, they they define in the label</li> </ul>	3 4 5 6 7	far out that is?  A. The the
4 5 6 7 8	<ul> <li>A. Yeah.</li> <li>Q. What what does that mean, "it will be labeled"?</li> <li>A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the</li> </ul>	3 4 5 6 7 8	far out that is?  A. The the
4 5 6 7 8 9	<ul> <li>A. Yeah.</li> <li>Q. What what does that mean, "it will be labeled"?</li> <li>A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the</li> </ul>	3 4 5 6 7 8 9	far out that is?  A. The the
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4 5 6 7 8 9 10 11 12	A. Yeah.  Q. What what does that mean, "it will be labeled"?  A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the patient must have in order to be a candidate for the therapy.  In our case, it would be moderate to severe COPD, you know, and what the	3 4 5 6 7 8 9 10 11 12 13	far out that is?  A. The the
4 5 6 7 8 9 10 11 12 13	A. Yeah.  Q. What what does that mean, "it will be labeled"?  A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the patient must have in order to be a candidate for the therapy.  In our case, it would be moderate to severe COPD, you know, and what the testing parameters are that make that	3 4 5 6 7 8 9 10 11 12 13	far out that is?  A. The the
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4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Yeah.  Q. What what does that mean, "it will be labeled"?  A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the patient must have in order to be a candidate for the therapy.  In our case, it would be moderate to severe COPD, you know, and what the testing parameters are that make that patient formally eligible to get the therapy; and, number two, what are what are the requirements for a person to be	3 4 5 6 7 8 9 10 11 12 13 14 15 16	far out that is?  A. The the Q. I should have asked a more clear question.  Q. You mentioned that training A. Yes.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Yeah.  Q. What what does that mean, "it will be labeled"?  A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the patient must have in order to be a candidate for the therapy.  In our case, it would be moderate to severe COPD, you know, and what the testing parameters are that make that patient formally eligible to get the therapy; and, number two, what are what are the requirements for a person to be to use the device.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	far out that is?  A. The the  Q. I should have asked a more clear question.  Q. You mentioned that training  A. Yes.  Q will be required to be able to use this
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yeah.  Q. What what does that mean, "it will be labeled"?  A. Well, the the when the FDA approves a product, they they define in the label who the patients are that what are the what are the inclusion criteria that the patient must have in order to be a candidate for the therapy.  In our case, it would be moderate to severe COPD, you know, and what the testing parameters are that make that patient formally eligible to get the therapy; and, number two, what are what are the requirements for a person to be to use the device.  You know, what is the training qualifications, you know, for a person to be able to use the device. Those are defined as part of a product being approved by the	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	far out that is?  A. The the  Q. I should have asked a more clear question.  Q. You mentioned that training  A. Yes.  Q will be required to be able to use this product?  A. Yes.  Q. What can you describe for me what that training is?

#### Page 62 Page 64 1 requirement even to just be doing our the whole clinical program, but I would 1 2 2 clinical trials at this point in time, you expect it will probably be in the 3 know, where we -- anybody who's going to be 3 three-to-five-case range. 4 4 an investigator for us has to go through the Q. How -- how, if at all, are patients targeted 5 5 formalized training program, which consists for Holaira marketing? 6 of both didactic, where it's slide 6 A. We don't do any -- any -- any marketing to 7 7 patients, you know, at this point. Patients presentations, you know, to instruct them in 8 8 every aspect of how to use both the console have the potential to become aware of us, 9 and the device itself, you know, how to run 9 you know, by finding -- you know, by 10 them, how to position them. 10 discovering it, you know, by reading But there's also a -- you know, so, 11 journals or going on the Website or things 11 12 there's a mechanical part to it, but there's 12 like that, but we don't actively do any 13 also an education about patient selection, 13 marketing to patients. 14 Q. What is the -- does the company have a sense 14 you know, entry criteria, you know, for 15 as to what the price-point for the Holaira 15 patients and also how the patients are 16 System will be once it's commercially 16 followed up afterwards. So, it's a 17 comprehensive, you know, all -- all parts of 17 available? 18 A. Well, it will be -- there's two components 18 it. 19 And in addition to the didactic 19 to it. There would be the catheter, you 20 know, the dNerva catheter, will have -presentations, there's also a hands-on 20 21 which is a disposable, one-time use, and 21 training process, where -- where they use 22 will have one price; and then the console, 22 the device on a mannequin, as well as on a 23 which can be used repeatedly, you know, on 23 human cadaver, in a cadaver lab. 24 24 Q. And who provides this training to many cases, will be another. 25 So, there will be two purchased 25 physicians? Page 63 Page 65 things; the console and the catheter. 1 A. The company. We do, the company. You know, 1 2 2 our -- our technical team. 3 Q. Company employees? 3 4 A. Company employees, yeah. 4 5 5 Q. Is there any support provided by company 6 6 employees at actual patient cases? 7 A. Yes. After -- after completing the training 7 Q. Are you familiar -- in your time as an 8 8 program, there is company support at all of interventional cardiologist, and as well as 9 9 the clinical cases, 100 percent of them, and based on your experience selling Class 3 10 when -- and we anticipate that that will go 10 medical devices, are you familiar with the 11 on throughout the entire clinical program, 11 process for purchasing Class 3 medical 12 and the term they use for this is 12 devices? proctoring, you know, in the medical world; 13 13 A. In hospitals? 14 and there will be a requirement that comes 14 Q. Correct. in at the time of approval by the FDA for 15 15 A. Yes. 16 when the product goes commercial will be a 16 Q. What -- who makes the decision to purchase a 17 17 specific designation for how many cases Class 3 medical device? 18 after completing the training program a 18 A. Hospitals have what's called a purchasing 19 physician has to be proctored before he can 19 department, and the purchasing department is 20 really be turned loose, you know, to just do 20 really the one that -- they issue the 21 these cases in an unsupervised fashion. 21 checks. I mean, that's where -- that's the 22 And where that number is going to 22 key thing you got to get past, and they have 23 be for the number of required proctored 23 formalized processes for how they make the 24 cases, isn't settled yet. I mean we'll 24 decisions. 25 learn more about that as -- as we go through 25 And, in general, the process starts

	Page 66		Page 68
1	when a physician tells the purchasing	1	commodity-type products, you know, that
2	department that there's a new product, or in	2	don't require education. You know, like for
3	some cases, the product's been around, but	3	example, if you had a there's 30
4	just hasn't been there on you know,	4	different hip prostheses out on the market,
5	available before, a physician makes a	5	and they're very and in many cases very
6	request that they would like to have a	6	hard to differentiate one from another. You
7	product, you know, put in the inventory or	7	know, a company might give a distributor,
8	on the shelf, so to speak, at the hospital.	8	here's our hip prostheses, go out there and
9	And then when that happens, a	9	sell it, and because it's not a technical
10	process starts in the purchasing department,	10	sale, and if but as products get more and
11	where where it's basically an application	11	more sophisticated, it's a you need your
12	process where you have to educate the	12	own highly, highly educated company
13	purchasing department about what it is, what	13	representative to go in there and and
14	its merits are, you know, what its potential	14	educate you know, educate that physician,
15	benefits are, you know, to the patient.	15	and then the hospital too.
16	It's usually initiated by it can	16	I mean, you know, the company reps
17	be initiated by any one of the physician,	17	get involved in the in the education part
18	you know, specialties in the hospital.	18	even working with the purchasing departments
19	Generally purchasing departments then	19	as well.
20	consider other things. They might they	20	Q. And what what role does the physician
21	might ask for feedback from other	21	have in the decision to purchase the
22	specialties that would know about this.	22	product?
23	They they would they may look for	23	A. He is a he makes a recommendation, but
24	medical society recommendations. They	24	his recommendation is essential to starting
25	would they also would look very carefully	25	the process. I don't know of any situation
	Page 67		Page 69
1	Page 67	1	Page 69 where a hospital purchasing department would
1 2		1 2	_
	about whether there's reimbursement		where a hospital purchasing department would
2	about whether there's reimbursement available.	2	where a hospital purchasing department would just, on their own, decide they want to put
2 3	about whether there's reimbursement available.  Sometimes hospitals will decide	2	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't
2 3 4	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no	2 3 4	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.
2 3 4 5	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the	2 3 4 5	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it
2 3 4 5 6	about whether there's reimbursement available. Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it	2 3 4 5 6	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the
2 3 4 5 6 7	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and	2 3 4 5 6 7	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?
2 3 4 5 6 7 8	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into	2 3 4 5 6 7 8	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into conflict, you know, hospital I mean, physicians versus hospitals that you know, if the physicians want it, and the hospital doesn't want to buy it, those are interesting discussions, but it's a pretty involved process.  Q. And why does the direct sales force or why is the intent for the direct sales force at Holaira to work directly with	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.  Q. Why not?  A. It can't be sold. It's not for sale to to patients. It's for sale only to to the hospital's purchasing department on the recommendation, you know, of the pulmonologist.  Q. How would a patient who comes across the Holaira name, once the product's commercially available, how would that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into conflict, you know, hospital I mean, physicians versus hospitals that you know, if the physicians want it, and the hospital doesn't want to buy it, those are interesting discussions, but it's a pretty involved process.  Q. And why does the direct sales force or why is the intent for the direct sales force at Holaira to work directly with interventional pulmonologists as opposed to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.  Q. Why not?  A. It can't be sold. It's not for sale to to patients. It's for sale only to to the hospital's purchasing department on the recommendation, you know, of the pulmonologist.  Q. How would a patient who comes across the Holaira name, once the product's commercially available, how would that patient possibly get the treatment?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into conflict, you know, hospital I mean, physicians versus hospitals that you know, if the physicians want it, and the hospital doesn't want to buy it, those are interesting discussions, but it's a pretty involved process.  Q. And why does the direct sales force or why is the intent for the direct sales force at Holaira to work directly with interventional pulmonologists as opposed to the purchasing department?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.  Q. Why not?  A. It can't be sold. It's not for sale to to patients. It's for sale only to to the hospital's purchasing department on the recommendation, you know, of the pulmonologist.  Q. How would a patient who comes across the Holaira name, once the product's commercially available, how would that patient possibly get the treatment?  A. They would have to they would have to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into conflict, you know, hospital I mean, physicians versus hospitals that you know, if the physicians want it, and the hospital doesn't want to buy it, those are interesting discussions, but it's a pretty involved process.  Q. And why does the direct sales force or why is the intent for the direct sales force at Holaira to work directly with interventional pulmonologists as opposed to the purchasing department?  A. It's both a combination of the complexity of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.  Q. Why not?  A. It can't be sold. It's not for sale to to patients. It's for sale only to to the hospital's purchasing department on the recommendation, you know, of the pulmonologist.  Q. How would a patient who comes across the Holaira name, once the product's commercially available, how would that patient possibly get the treatment?  A. They would have to they would have to identify a hospital and physician that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	about whether there's reimbursement available.  Sometimes hospitals will decide this is a great product, but because no reimbursement is available from the insurance companies, they still won't put it on the shelf. You know you know, and that's when it sometimes comes into conflict, you know, hospital I mean, physicians versus hospitals that you know, if the physicians want it, and the hospital doesn't want to buy it, those are interesting discussions, but it's a pretty involved process.  Q. And why does the direct sales force or why is the intent for the direct sales force at Holaira to work directly with interventional pulmonologists as opposed to the purchasing department?  A. It's both a combination of the complexity of the product, plus the cost, and and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	where a hospital purchasing department would just, on their own, decide they want to put something on the shelf. That wouldn't happen.  Q. With a Class 3 medical device, is it possible for a patient to purchase the product?  A. No.  Q. Why not?  A. It can't be sold. It's not for sale to to patients. It's for sale only to to the hospital's purchasing department on the recommendation, you know, of the pulmonologist.  Q. How would a patient who comes across the Holaira name, once the product's commercially available, how would that patient possibly get the treatment?  A. They would have to they would have to identify a hospital and physician that that are approved to do the procedure and go
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	Page 70		Page 72
1	Dr. Wahr.	1	Q. Right. And you reviewed this application
2	THE WITNESS: Okay.	2	before you signed it, correct?
3	(Break taken.)	3	A. Yes.
4	MR. HANSEN: Dr. Wahr, I have no	4	Q. And you understood what you were applying
5	further questions for you at this time.	5	for when you sign the application, correct?
6	Thank you.	6	A. Yes.
7	Do you want to take a break,	7	Q. And all the information in this application
8	or do you want to	8	was correct as of December 19th, 2012 when
9	MR. WALZ: Yeah, if we can take a	9	the application was signed, correct?
10	break, and I can just kind of get some docs	10	A. I haven't it's been a long time since
11	ready, and then we'll come back.	11	I've read it, but I assume it was.
12	(Break taken.)	12	Q. So, if we look at the let's see here, if
13	EXAMINATION	13	we look at the page Bate-numbered 1391?
14	BY MR. WALZ:	14	A. Yes.
15	Q. Dr. Wahr, are you ready?	15	Q. You will see, next to International Class
16	A. Yes.	16	10, there's a description that reads:
17	Q. Okay.	17	Medical devices, medical apparatus and
18	MR. WALZ: I'll just have you mark	18	instruments?
19	this first.	19	A. Yes.
20	(Exhibit Number 3 was marked.)	20	Q. Now, that identification was at some point
21	BY MR. WALZ:	21	amended; is that correct?
22	Q. So, Dr. Wahr, you've been handed what's been	22	A. I don't know if we amended this or not. I
23	marked as Deposition Exhibit Number 3. This	23	don't know the answer to that.
24	was a document produced by Holaira.	24	Q. Okay.
25	Do you recognize that document?	25	A. I don't understand your question.
	Page 71		Page 73
1	Page 71  A. Yes.	1	Page 73 (Exhibit Number 4 was marked.)
1 2	_	1 2	•
	A. Yes.	1	(Exhibit Number 4 was marked.)
2	A. Yes.  Q. And if we turn to page well, it's	2	(Exhibit Number 4 was marked.) BY MR. WALZ:
2 3	A. Yes.  Q. And if we turn to page well, it's  Bate-numbered 1392?	2 3	(Exhibit Number 4 was marked.) BY MR. WALZ: Q. So, you've been handed what's been marked as
2 3 4 5 6	<ul> <li>A. Yes.</li> <li>Q. And if we turn to page well, it's Bate-numbered 1392?</li> <li>A. Yes.</li> <li>Q. At the bottom there, there's next to signature, Dennis W. Wahr; is that correct?</li> </ul>	2 3 4	(Exhibit Number 4 was marked.) BY MR. WALZ: Q. So, you've been handed what's been marked as Deposition Exhibit Number 4. This is a printout from the United States Patent and Trademark Office test database, and next to
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>A. Yes.</li> <li>Q. And if we turn to page well, it's Bate-numbered 1392?</li> <li>A. Yes.</li> <li>Q. At the bottom there, there's next to signature, Dennis W. Wahr; is that correct?</li> <li>A. Yes.</li> <li>Q. And that is your signature?</li> <li>A. Yes.</li> <li>Q. And</li> <li>A. Well, I don't see a signature, but it's my name typed.</li> <li>Q. That's an electronic signature, correct?</li> <li>A. Oh, okay. All right.</li> <li>Q. And you signed this application, correct?</li> <li>A. I I probably did, yes. It's three years ago.</li> <li>Q. So, it's possible that someone else signed this application?</li> <li>A. No, I just don't see my signature on here.</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	(Exhibit Number 4 was marked.) BY MR. WALZ: Q. So, you've been handed what's been marked as Deposition Exhibit Number 4. This is a printout from the United States Patent and Trademark Office test database, and next to the Goods and Services heading, there's a description that reads: Medical devices for treating obstructive lung diseases; medical apparatus and instruments for treating obstructive lung diseases.  Do you see that?  A. Yes. Q. And that's different from the description we saw on Exhibit 3, correct?  A. In that paragraph that starts,  "International Class;" you're referring to? Q. Correct, on Exhibit Number 3.  A. Well, it's I mean, the wording is slightly different, but it's saying the same thing. I mean, it's it's a device for
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>A. Yes.</li> <li>Q. And if we turn to page well, it's Bate-numbered 1392?</li> <li>A. Yes.</li> <li>Q. At the bottom there, there's next to signature, Dennis W. Wahr; is that correct?</li> <li>A. Yes.</li> <li>Q. And that is your signature?</li> <li>A. Yes.</li> <li>Q. And</li> <li>A. Well, I don't see a signature, but it's my name typed.</li> <li>Q. That's an electronic signature, correct?</li> <li>A. Oh, okay. All right.</li> <li>Q. And you signed this application, correct?</li> <li>A. I I probably did, yes. It's three years ago.</li> <li>Q. So, it's possible that someone else signed this application?</li> <li>A. No, I just don't see my signature on here.  MR. HANSEN: Objection to the form. THE WITNESS: No. Yeah, so, you know, I mean I'm taking your word for it</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	(Exhibit Number 4 was marked.) BY MR. WALZ: Q. So, you've been handed what's been marked as Deposition Exhibit Number 4. This is a printout from the United States Patent and Trademark Office test database, and next to the Goods and Services heading, there's a description that reads: Medical devices for treating obstructive lung diseases; medical apparatus and instruments for treating obstructive lung diseases.  Do you see that?  A. Yes. Q. And that's different from the description we saw on Exhibit 3, correct?  A. In that paragraph that starts,  "International Class;" you're referring to? Q. Correct, on Exhibit Number 3.  A. Well, it's I mean, the wording is slightly different, but it's saying the same thing. I mean, it's it's a device for treating obstructive it's a medical apparatus and instrument. The one the

	Page 74		Page 76
1	Q. And when you say "the right," you're	1	A. Yes.
2	referring to Exhibit Number 4, correct?	2	Q. And you did sign this application as well?
3	A. Right.	3	A. Yes.
4	Q. And looking at Exhibit Number 4, does that	4	Q. Okay. And then if we look on the third page
5	description accurately reflect the device	5	from the end, next to Class 10, we see
6	that will be used in connection with the	6	medical devices, medical apparatus and
7	Holaira mark?	7	instruments, correct?
8	A. Yes, this is appropriate.	8	A. Yes.
9	Q. Okay. And you have no intention of further	9	(Exhibit Number 6 was marked.)
10	amending or clarifying the identification	10	BY MR. WALZ:
11	description that you see in Exhibit	11	Q. So, you have been handed what's been marked
12	Number 4, correct?	12	as Deposition Exhibit Number 6. This is a
13	A. Not at this point in time.	13	printout from the United States Patent and
14	Q. Okay. And just for a purpose of clarity, I	14	Trademark Office test database. It's for
15	think when you were discussing before the	15	the dNerva mark, and, again, next to the
16	difference between dNerva the mark	16	heading Goods and Services, we see medical
17	dNerva	17	devices for treating obstructive lung
18	A. Yes.	18	diseases; medical apparatus and instruments
19	Q and the Holaira mark, you mentioned that	19	for treating obstructive lung diseases?
20	dNerva will be used as the product name, but	20	A. Yes.
21	that Holaira is going to be the company	21	MR. HANSEN: Objection, outside of
22	name?	22	the scope of the direct examination.
23	A. Holaira Holaira is the company name. The	23	BY MR. WALZ:
24	system, you know, the whole system that	24	Q. And similar to the Holaira mark we saw
25	consists of the console, you know, and the	25	before, comparing the Exhibit 6 to
	Page 75		Page 77
1	catheter, we call the Holaira Lung	1	Exhibit 5, the description was amended,
2	Denervation System.	2	correct, to what appears on Exhibit 6?
3	Q. Okay.	3	MR. HANSEN: Same objection.
4	A. But the catheter, the catheter that's	4	You can answer.
5	disposable, the part that goes through the	5	THE WITNESS: Okay. The words on
6	bronchoscope, is the dNerva catheter.	6	the on the Exhibit 6 are are slightly
7	Q. I see, okay.		
	-	7	different than here, but, again, it appears
8	(Exhibit number 5 was marked.)	8	like they're saying the same thing.
9	BY MR. WALZ:	8 9	like they're saying the same thing. BY MR. WALZ:
9	BY MR. WALZ: Q. So, you have been handed what's been marked	8 9 10	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I
9 10 11	BY MR. WALZ: Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.	8 9 10 11	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't
9 10 11 12	BY MR. WALZ: Q. So, you have been handed what's been marked as Deposition Exhibit Number 5. Do you recognize this document?	8 9 10 11 12	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is
9 10 11 12 13	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.	8 9 10 11 12 13	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?
9 10 11 12 13 14	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's	8 9 10 11 12 13 14	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4? A. 4.
9 10 11 12 13 14	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.	8 9 10 11 12 13 14 15	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the
9 10 11 12 13 14 15	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within	8 9 10 11 12 13 14 15 16	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4? A. 4. Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the
9 10 11 12 13 14 15 16	BY MR. WALZ: Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.	8 9 10 11 12 13 14 15 16	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in
9 10 11 12 13 14 15 16 17	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.	8 9 10 11 12 13 14 15 16 17	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?
9 10 11 12 13 14 15 16 17 18	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.  BY MR. WALZ:	8 9 10 11 12 13 14 15 16 17 18	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?  A. They look the same.
9 10 11 12 13 14 15 16 17 18 19 20	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.  BY MR. WALZ:  Q. You do recognize it? Okay.	8 9 10 11 12 13 14 15 16 17 18 19 20	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?  A. They look the same.  MR. HANSEN: Same objection.
9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.  BY MR. WALZ:  Q. You do recognize it? Okay.  And if we flip to the second to the	8 9 10 11 12 13 14 15 16 17 18 19 20 21	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?  A. They look the same.  MR. HANSEN: Same objection. BY MR. WALZ:
9 10 11 12 13 14 15 16 17 18 19 20 21 22	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.  BY MR. WALZ:  Q. You do recognize it? Okay.  And if we flip to the second to the last page again at the bottom, we see next	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	like they're saying the same thing. BY MR. WALZ: Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4. Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?  A. They look the same.  MR. HANSEN: Same objection. BY MR. WALZ: Q. Okay. And if you look at Exhibit 1
9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. WALZ:  Q. So, you have been handed what's been marked as Deposition Exhibit Number 5.  Do you recognize this document?  A. Yes.  MR. HANSEN: I'll just object it's outside the scope of the direct examination.  MR. WALZ: We'll bring it within the scope.  THE WITNESS: Yes.  BY MR. WALZ:  Q. You do recognize it? Okay.  And if we flip to the second to the	8 9 10 11 12 13 14 15 16 17 18 19 20 21	like they're saying the same thing. BY MR. WALZ:  Q. And if we compare Exhibit 6 with, I believe what was the Holaira I can't remember the number test page? So, is that Exhibit 4?  A. 4.  Q. So, if we compare what's in Exhibit the identification in Exhibit 6 with the identification of the goods description in Exhibit 4, those descriptions are the same?  A. They look the same.  MR. HANSEN: Same objection. BY MR. WALZ:

1 BY MR. WALZ: 2 Q. If we look at the page that's numbered 1391, 3 underneath that International Class 10, 4 there's an Intent to Use, and it says: The 5 applicant has a bona fide intention to use 6 the or use through an applicant's related 7 company or licensee the mark in commerce or 8 in connection with the identified on or 9 in connection with the identified goods or 10 services. 11 Do you see that? 12 A. Yes. 13 Q. And at the time you signed this application, 14 you had the present intent to use the 15 Holaira mark in connection with a medical 16 device for treating obstructive lung 17 diseases, medical apparatus and instruments 18 for treating obstructive lung diseases, 19 carrect? 20 A. Yes, after going through all the appropriate 21 regulatory approvals. 2 A. Well, the we decided that we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a distinct name for for the actual catheter itself versus the system, and so, we wanted one more we wanted a different it's different it's different parts of it's a specific part of the bigger system.  7 You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different it's different it's different parts of it's a specific part of the bigger system.  7 You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different parts of the bigger system.  9 Q. So, is the dNerva application, misdescriptive of the goods that w
underneath that International Class 10, there's an Intent to Use, and it says: The applicant has a bona fide intention to use the or use through an applicant's related company or licensee the mark in commerce or in connection with the identified on or in connection with the identified goods or services.  Do you see that?  A. Yes.  Q. And at the time you signed this application, you had the present intent to use the Holaira mark in connection with a medical device for treating obstructive lung for treating obstructive lung for treating obstructive lung diseases, correct?  A. Yes, after going through all the appropriate  itself versus the system, and so, we wanted one more we wanted a different it's one more we wanted a different it's one more we wanted a different it's different parts of it's a specific part of the bigger system.  You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different.  Q. So, is the dNerva application, misdescriptive of the goods that will actually be used in connection with the mark?  The goods that will actually be used in connection with the mark?  MR. HANSEN: Object to form and outside the scope. BY MR. WALZ:  Q. I guess I'm trying to find out if one of these applications is misdescriptive of of what you intend to use the mark for?  A. Well, the the description is general. I
there's an Intent to Use, and it says: The applicant has a bona fide intention to use the or use through an applicant's related company or licensee the mark in commerce or in connection with the identified on or services.  Do you see that?  A. Yes.  Q. And at the time you signed this application, you had the present intent to use the Holaira mark in connection with a medical device for treating obstructive lung for treating obstructive lung diseases, correct?  A. Yes, after going through all the appropriate  different parts of it's a specific part of different parts of it's a specific part of the bigger system.  different parts of it's a specific part of the bigger system.  different parts of it's a specific part of the bigger system.  different parts of it's a specific part of the bigger system.  To the bigger system.  You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different.  Sung Denervation System of the bigger system.  You know, the system is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System of it's a specific part of the bigger system.  You know, the system is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System of it's a specific part of the bigger system.  You know, the system is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the Holaira  Pour know, the system is the Holaira  Lung Denervation System of the bigger system.  You know, the system is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System by the disposable product is its own entity. It's different parks  You know, the system is the Holaira  Lung Denervation System by the Holaira  Lung Denervation System by the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the Holaira  Lung Denervation System is the H
applicant has a bona fide intention to use the or use through an applicant's related company or licensee the mark in commerce or in connection with the identified on or services.  Do you see that?  A. Yes.  Q. And at the time you signed this application, you had the present intent to use the Holaira mark in connection use the device for treating obstructive lung diseases, medical apparatus and instruments for treating obstructive lung diseases, correct?  A. Yes, after going through all the appropriate  different parts of it's a specific part of the bigger system.  different parts of it's a specific part of the bigger system.  different parts of it's a specific part of the bigger system.  You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different.  Product is its own entity. It's different.  2. So, is the dNerva application, the ID in that dNerva application, misdescriptive of the goods that will actually be used in connection with the mark?  A. Yes, after going through all the appropriate  different parts of it's a specific part of the bigger system.  You know, the system is the Holaira  Lung Denervation System, but the disposable product is its own entity. It's different parts of it's a specific part  You know, the system is the Holaira  Lung Denervation System, but the disposable in the specific part  A. Yes application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application, the ID in that dNerva application of the disposable product is its own entity. It's different parts of the bigger system.  2. So, is the dNerva application, misdescriptive of it should be used in connection with the mark?  A. Yes application, misdescriptive of it should be used in connection with the mark?  A. Yes, after going through all the appropriate  A. Wel
the or use through an applicant's related company or licensee the mark in commerce or in connection with the identified on or in connection with the identified goods or in connection with the identified goods or services.  Do you see that?  A. Yes.  A. Yes, after going through all the appropriate  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Yes.  A. Well, the the description is general. I
7 company or licensee the mark in commerce or 8 in connection with the identified on or 9 in connection with the identified goods or 10 services. 11 Do you see that? 12 A. Yes. 13 Q. And at the time you signed this application, 14 you had the present intent to use the 15 Holaira mark in connection with a medical 16 device for treating obstructive lung 17 diseases, medical apparatus and instruments 18 for treating obstructive lung diseases, 19 correct? 20 A. Yes, after going through all the appropriate 21 Company or licensee the mark in commerce or 22 No know, the system is the Holaira 25 Lung Denervation System, but the disposable product is its own entity. It's different. 26 A. Yes disposable product is its own entity. It's different. 27 Q. So, is the dNerva application, misdescriptive of 28 the goods that will actually be used in connection with the mark? 29 A. Yes, after going through all the appropriate 20 A. Well, the the description is general. I
in connection with the identified on or in connection with the identified goods or services.  Do you see that?  A. Yes.  Q. And at the time you signed this application, you had the present intent to use the Holaira mark in connection with a medical device for treating obstructive lung for treating obstructive lung for treating obstructive lung diseases, correct?  A. Yes, after going through all the appropriate  B. Lung Denervation System, but the disposable product is its own entity. It's different.  Q. So, is the dNerva application, the ID in that dNerva application, misdescriptive of the goods that will actually be used in connection with the mark?  MR. HANSEN: Object to form and outside the scope.  BY MR. WALZ:  Q. I guess I'm trying to find out if one of these applications is misdescriptive of of what you intend to use the mark for?  A. Yes, after going through all the appropriate  A. Well, the the description is general. I
9 in connection with the identified goods or 10 services. 11 Do you see that? 12 A. Yes. 13 Q. And at the time you signed this application, 14 you had the present intent to use the 15 Holaira mark in connection with a medical 16 device for treating obstructive lung 17 diseases, medical apparatus and instruments 18 for treating obstructive lung diseases, 19 correct? 20 A. Yes, after going through all the appropriate 20 A. Well, the the description is general. I
services.  Do you see that?  A. Yes.  Q. And at the time you signed this application, you had the present intent to use the Holaira mark in connection with a medical device for treating obstructive lung for treating obstructive lung diseases, medical apparatus and instruments for treating obstructive lung diseases, correct?  A. Yes, after going through all the appropriate  10 Q. So, is the dNerva application, the ID in that dNerva application, misdescriptive of the down application, misdescriptive of the goods that will actually be used in connection with the mark?  12 the goods that will actually be used in connection with the mark?  MR. HANSEN: Object to form and outside the scope.  BY MR. WALZ:  Q. I guess I'm trying to find out if one of these applications is misdescriptive of of what you intend to use the mark for?  A. Yes, after going through all the appropriate  A. Well, the the description is general. I
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12 A. Yes.  13 Q. And at the time you signed this application, 14 you had the present intent to use the 15 Holaira mark in connection with a medical 16 device for treating obstructive lung 17 diseases, medical apparatus and instruments 18 for treating obstructive lung diseases, 19 correct?  10 Liguess I'm trying to find out if one of these applications is misdescriptive of 19 correct?  10 Liguess I'm trying to find out if one of these applications is misdescriptive of 19 of what you intend to use the mark for?  20 A. Yes, after going through all the appropriate 20 A. Well, the the description is general. I
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diseases, medical apparatus and instruments  for treating obstructive lung diseases,  correct?  A. Yes, after going through all the appropriate  17 Q. I guess I'm trying to find out if one of these applications is misdescriptive of of what you intend to use the mark for?  A. Well, the the description is general. I
for treating obstructive lung diseases,  18 these applications is misdescriptive of  19 correct?  20 A. Yes, after going through all the appropriate  20 A. Well, the the description is general. I
19 correct?  19 of what you intend to use the mark for?  20 A. Yes, after going through all the appropriate 20 A. Well, the the description is general. I
20 A. Yes, after going through all the appropriate 20 A. Well, the the description is general. I
- A straight of the decomposition of the decomposit
21 regulatory approvals. 21 mean, they both apply. I mean, it's
2 , 11
22 Q. Right. 22 accurate for both. It's a correct
23 A. Yeah. 23 designation for both both marks.
24 Q. And after if we look at Exhibit 5, that's 24 Q. But you said dNerva would be used in
25 the dNerva application, looking on page 25 connection with the disposable catheter, not
Page 79 Page 81
1 page 4, under that International Class 10, 1 a medical device for treating obstructive
2 we have that same "intent to use" language? 2 lung diseases?
3 MR. HANSEN: Object, outside the 3 A. Well
4 scope. 4 MR. HANSEN: Object to the form.
5 You can answer. 5 THE WITNESS: Well, the catheter is
o for our answer.
6 THE WITNESS: Yes 6 part of the system. So, it would be used in
6 THE WITNESS: Yes. 6 part of the system. So, it would be used in 7 BY MR WALZ: 7 the same way, and you're confusing me. I'm
7 BY MR. WALZ: 7 the same way, and you're confusing me. I'm
7 BY MR. WALZ: 7 the same way, and you're confusing me. I'm 8 Q. And the dNerva application was filed, if we 8 not sure where you're going with that.
7 BY MR. WALZ: 7 the same way, and you're confusing me. I'm
7 BY MR. WALZ: 7 the same way, and you're confusing me. I'm 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 9 BY MR. WALZ:
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 10 was signed, I should say, on April 25th, 10 The same way, and you're confusing me. I'm 8 not sure where you're going with that. 9 BY MR. WALZ: 10 Q. That's okay. We can move on.
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 10 was signed, I should say, on April 25th, 11 2013, correct? 12 A. Yes. 7 the same way, and you're confusing me. I'm 8 not sure where you're going with that. 9 BY MR. WALZ: 10 Q. That's okay. We can move on. 11 A. Okay. 12 Q. So, the Holaira device can be used to treat
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 10 was signed, I should say, on April 25th, 11 2013, correct? 12 A. Yes. 7 the same way, and you're confusing me. I'm 8 not sure where you're going with that. 9 BY MR. WALZ: 10 Q. That's okay. We can move on. 11 A. Okay. 12 Q. So, the Holaira device can be used to treat
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 10 was signed, I should say, on April 25th, 11 2013, correct? 12 A. Yes. 13 Q. And then if we look at Exhibit 6, and we 17 the same way, and you're confusing me. I'm 8 not sure where you're going with that. 9 BY MR. WALZ: 10 Q. That's okay. We can move on. 11 A. Okay. 12 Q. So, the Holaira device can be used to treat chronic asthma, correct?
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we 9 look at the second to the last page or 10 was signed, I should say, on April 25th, 11 2013, correct? 12 A. Yes. 13 Q. And then if we look at Exhibit 6, and we 14 look at the filing date, it was actually 17 the same way, and you're confusing me. I'm 8 not sure where you're going with that. 9 BY MR. WALZ: 10 Q. That's okay. We can move on. 11 A. Okay. 12 Q. So, the Holaira device can be used to treat chronic asthma, correct? 13 A. In theory, if we if we chose to go that
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct? 10 A. Yes. 11 Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct? 10 The same way, and you're confusing me. I'm not sure where you're going with that.  8 BY MR. WALZ: 9 Q. That's okay. We can move on. 11 A. Okay. 12 Q. So, the Holaira device can be used to treat chronic asthma, correct? 13 A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be
7 BY MR. WALZ: 8 Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct? 10 A. Yes. 11 Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct? 10 A. Yes. 11 A. Okay. 12 A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct?  A. Yes. Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes. Q. And that's approximately four months after  The same way, and you're confusing me. I'm not sure where you're going with that.  BY MR. WALZ:  Q. That's okay. We can move on.  A. Okay.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct?  A. Yes. Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes. Q. And that's approximately four months after the Holaira application, which is Exhibit 3,  The same way, and you're confusing me. I'm not sure where you're going with that.  BY MR. WALZ:  Q. That's okay. We can move on.  A. Okay.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that is an area that you're thinking of
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct?  A. Yes.  Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  The same way, and you're confusing me. I'm not sure where you're going with that.  BY MR. WALZ:  Q. That's okay. We can move on.  A. Okay.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that is an area that you're thinking of expanding into, correct?
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct?  A. Yes.  Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  A. Yes.  The same way, and you're confusing me. I'm not sure where you're going with that.  BY MR. WALZ:  Q. That's okay. We can move on.  A. Okay.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that is an area that you're thinking of expanding into, correct?  A. Not right now.
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or was signed, I should say, on April 25th, 2013, correct?  A. Yes.  Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  A. Yes.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  A. Yes.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that is an area that you're thinking of expanding into, correct?  A. Not right now.  Q. But it is something that you have
BY MR. WALZ:  Q. And the dNerva application was filed, if we look at the second to the last page or  was signed, I should say, on April 25th,  2013, correct?  A. Yes.  Q. And then if we look at Exhibit 6, and we look at the filing date, it was actually filed the same day as well, correct?  A. Yes.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  A. Yes.  Q. So, the Holaira device can be used to treat chronic asthma, correct?  A. In theory, if we if we chose to go that way, in theory, it could, yes. It would be a completely new clinical development program.  Q. And that's approximately four months after the Holaira application, which is Exhibit 3, was signed by you, correct?  A. Yes.  Q. So, my question is: How could you have a bona fide intent to use the Holaira mark if  A. It's theoretically possible that we could

	Page 82		Page 84
1	potential investors and and identified it	1	group of usually progressive lung disorders
2	as a potential area?	2	with overlapping signs and symptoms,
3	A. Yes.	3	including asthma.
4	Q. And you market as you testified, you	4	Do you see that?
5	market the device to physicians, right,	5	MR. HANSEN: Object, hearsay,
6	interventional pulmonologists?	6	foundation.
7	A. Interventional pulmonologists.	7	THE WITNESS: I'm not sure what
8	Q. Okay. And you're marketing that as a	8	page I can't seem to find the page you're
9	treatment for COPD, correct?	9	on.
10	A. Correct.	10	BY MR. WALZ:
11	Q. And that term is understood as an umbrella	11	Q. So, at the top of each page, there are page
12	term, right?	12	numbers; do you see that?
13	A. COPD, yes.	13	A. Oh, okay. What page?
14	Q. And so, under that umbrella, would include a	14	Q. Page 5, and that definition begins at the
15	condition such as chronic asthma, correct?	15	bottom and spills over.
16	A. No. COPD is generally is generally felt	16	So, I was saying, do you see on
17	to have two major components. One would be	17	page 5, that last definition of COPD?
18	emphysema, and the other would be chronic	18	A. Yes.
19	bronchitis.	19	MR. HANSEN: Same objections.
20	Asthma is a is felt to be a	20	BY MR. WALZ:
21	distinct different disease process. We	21	Q. And it says: Chronic Obstructive Pulmonary
22	we do not believe that we certainly	22	Disease, Pulmonology, an umbrella term for a
23	believe that asthma does not fall under our	23	group of usually progressive lung disorders
24	label indications.	24	with overlapping signs and symptoms,
25	MR. WALZ: Okay. Would you mark	25	including asthma?
	Page 83		Page 85
1	that as 7, I believe.	1	MR. HANSEN: Same objection.
2	(Exhibit Number 7 was marked.)	2	BY MR. WALZ:
3	BY MR. WALZ:	3	Q. Do you see that?
4	Q. So, you've been handed what's been marked as	l .	
5		4	A. Yes.
J	Deposition Exhibit Number 7. It is a	5	•
6	Deposition Exhibit Number 7. It is a printout from the		A. Yes.
	·	5	A. Yes. Q. Okay. And then if we turn to page 6, we see
6	printout from the	5 6	A. Yes.     Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.
6 7	printout from the medical-dictionary.com.	5 6 7	<ul><li>A. Yes.</li><li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.</li><li>This is from the Gale Encyclopedia of</li></ul>
6 7 8	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.	5 6 7 8	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to
6 7 8 9	printout from the medical-dictionary thefreedictionary com. These are definitions concerning COPD.  If you turn to page 5, and I guess	5 6 7 8 9	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic
6 7 8 9 10	printout from the medical-dictionary thefreedictionary com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look	5 6 7 8 9	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?
6 7 8 9 10 11	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the	5 6 7 8 9 10	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.
6 7 8 9 10 11	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD	5 6 7 8 9 10 11	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:
6 7 8 9 10 11 12	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page	5 6 7 8 9 10 11 12 13	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:  Q. Do you see that?
6 7 8 9 10 11 12 13	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from	5 6 7 8 9 10 11 12 13	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:  Q. Do you see that?  A. Yes.
6 7 8 9 10 11 12 13 14	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?	5 6 7 8 9 10 11 12 13 14	A. Yes.  Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:  Q. Do you see that?  A. Yes.  Q. Do you have any reason to dispute these
6 7 8 9 10 11 12 13 14 15	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.	5 6 7 8 9 10 11 12 13 14 15	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.</li> <li>This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma? <ul> <li>MR. HANSEN: Same objections.</li> </ul> </li> <li>BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> </ul>
6 7 8 9 10 11 12 13 14 15 16	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?	5 6 7 8 9 10 11 12 13 14 15 16	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of</li> </ul>
6 7 8 9 10 11 12 13 14 15 16 17	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?  A. Yes.	5 6 7 8 9 10 11 12 13 14 15 16 17	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of Chronic Obstructive Pulmonary Disease is</li> </ul>
6 7 8 9 10 11 12 13 14 15 16 17 18	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?  A. Yes.  MR. HANSEN: I'll object to the	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of Chronic Obstructive Pulmonary Disease is what we our indications on our labelling</li> </ul>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?  A. Yes.  MR. HANSEN: I'll object to the document as containing hearsay. BY MR. WALZ: Q. So, if you turn to the first page or on	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom. This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections. BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of Chronic Obstructive Pulmonary Disease is what we our indications on our labelling indication are for chronic bronchitis and emphysema. Asthma is excluded. We don't treat asthma.</li> </ul>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?  A. Yes.  MR. HANSEN: I'll object to the document as containing hearsay. BY MR. WALZ: Q. So, if you turn to the first page or on page 5, that final dictionary definition for	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom.  This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections.  BY MR. WALZ: </li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of Chronic Obstructive Pulmonary Disease is what we our indications on our labelling indication are for chronic bronchitis and emphysema. Asthma is excluded. We don't treat asthma.</li> <li>Q. Okay. But a doctor would understand, or a</li> </ul>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	printout from the medical-dictionary.thefreedictionary.com. These are definitions concerning COPD.  If you turn to page 5, and I guess it flows over into page 6, and if you look at page 6 first, this is well, the definition that begins on page 5 for COPD that turns over or spills over onto page 6 at the bottom, this is a definition from McGraw-Hill Concise Dictionary of Modern Medicine.  Do you see that at the bottom?  A. Yes.  MR. HANSEN: I'll object to the document as containing hearsay. BY MR. WALZ: Q. So, if you turn to the first page or on	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>A. Yes.</li> <li>Q. Okay. And then if we turn to page 6, we see another definition of COPD at the bottom. This is from the Gale Encyclopedia of Medicine, and it says: A term used to describe chronic lung diseases, like chronic bronchitis, emphysema and asthma?  MR. HANSEN: Same objections. BY MR. WALZ:</li> <li>Q. Do you see that?</li> <li>A. Yes.</li> <li>Q. Do you have any reason to dispute these definitions?</li> <li>A. I think that our our definition of Chronic Obstructive Pulmonary Disease is what we our indications on our labelling indication are for chronic bronchitis and emphysema. Asthma is excluded. We don't treat asthma.</li> </ul>

definitions to include asthma?  MR. HANSEN: Objection, form.  foundation and hearay.  THE WITNESS No. I don't agree.  BYME. WALZ:  G. D. But the Holaira System will compete with the Alair System; is that correct?  A. No.; it will not.  Q. You said though that the Holaira System or could possibly treat asthma?  A. We have no clinical development program for asthma, and every pulmonologist, as well as interventional pulmonologist, sees them as distinctly different diseases, and the only we could treat asthma would be if we started over from scratch with a completely new Phase 1, you know, feasibility study in asthma patients, which, at this point, there has been nothing initiated to start such a program. It would be unaffordable for us to do that.  Q an asthma program.  Page 87  Q. an asthma program?  Q an asthma program?  A. An asthma program?  Page 87  Q. But you are marketing that to your investors as a potential area of growth, correct?  A. An asthma program in theory, but understand that it would be another \$100 million development program, which has not started at this point.  The would be going all the way back to the starting point and starting ap to pint 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025.  I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  Page 87  A. Yes.  Q. And that indicates that the Alair System is used to treat asthma?  A. Yes.  Q. And discate that the builder point, Milestones Through 2016, there's a subpoint for asthma asthma?  A. Yes.  Q. And with the top a subpoint for asthma as part of the clinical heading?  A. Yes.  Q. And whas is this?  A. Yes.  Q. And with the old is a fact for the complete to the action of the point.  A. Yes.  Q. And that indicates that the builder point, Milestones Through 2016, there's a subpoint for asthma as part of the clinical heading?  A. Yes.  Q. And shar		Page 86		Page 88
3 Asthma, right? 4 THE WITNESS. No, I don't agree. 5 BYMR WALZ: 6 Q. But the Holaira System will compete with the 7 Alair System; is that correct? 8 A. No, it will not. 9 Q. You said though that the Holaira System 10 could possibly treat asthma? 11 A. We have no clinical development program for 12 asthma, and every pulmonologist, as well as 13 interventional pulmonologist, sees them as 14 distinctly different diseases, and the only 15 way we could treat asthma would be if we 16 started over from scratch with a completely 17 new Phase 1, you know, feasibility study in 18 asthma patients, which, at this point, there 19 has been nothing initiated to start such a 20 program. It would be unaffordable for us to 21 do that. 22 Q. To start— 23 A. An asthma program? 24 Q an asthma program? 25 A. Yes.  Page 87  1 Q. But you are markeling that to your investors 2 as a potential area of growth, correct? 3 A. If—in the future, if a new — if a new — 4 if another company were to buy Holaira, they 5 could make a decision to start an asthma 6 program in theory, but understand that it 7 would be agoing all the way back to the 8 starting point and starting at point 0 in 9 terms of that, and — and the earliest 10 commercialization date for us to have a 11 label indication for asthma, if somebody 12 wanted to start that today, might be 2025. 13 I mean, it's way out there, and it 14 would be another \$100 million development 15 point. 16 CEshibit Number 8 was marked.) 17 (Eshibit Number 8 was marked.) 18 BY MR. WALZ: 19 Q. Showing you what's been marked as Deposition 20 Exhibit Number 8. 21 Do you recognize this document? 22 A. Yes, yes. 23 Q. And what is this? 24 A. This is a presentation that I gave at the 25 Through 2016, there's a subpoint for asthma 26 and quadrentable the builet point, Milestones 27 Through 2016, there's a subpoint for asthma 28 and quadrentable the builet point, Milestones 29 Through 2016, there's a subpoint for asthma 29 Q. And underneath the builet point, Milestones 20 Q. And underneath the builet point,	1	definitions to include asthma?	1	Q. So, if you turn to page 2, in the heading,
## A. Yes, yes.  BY MR. WALZ:  O. But the Holiar's System will compete with the 7 Alair System; is that correct?  A. No, it will not.  O. You said inough that the Holiar's System could possibly treat ashma?  A. No, it will not.  O. You said inough that the Holiar's System could possibly treat ashma?  A. We have no clinical development program for ashma, and every pulmonologist, saw sell as interventional pulmonologist, saw sell as interventional pulmonologist, saw sell as interventional pulmonologist, saw sell as interventional pulmonologist, sees them as sidistinctly different diseases, and the only way we could treat ashma would be if we started over from scratch with a completely new Phase 1, you know, feasibility study in ashma patients, which, at this point, there has been nothing initiated to start such a program. It would be unaffordable for us to dothat.  O. To start  A. A. A. ashma program.  A. A. A. ashma program?  A. Yes.  Page 87  O. But you are marketing that to your investors as a potential area of growth, correct?  A. Yes.  Page 87  O. But you are marketing that to your investors as a potential area of growth, correct?  A. Yes.  Page 87  O. But you are marketing that to your investors as a potential area of growth, correct?  A. Yes.  Page 87  O. But you are marketing that to your investors as a potential area of growth, correct?  A. Yes.  Page 87  O. But you are marketing that to your investors as a potential area of growth, correct?  A. Yes.  O. And then if we turn to page 12,  Barban, there's a checkmark; under asthma, there's a checkmark; under asthma, there's a checkmark; under asthma, it seems body wanted to start that today, might be averable to the program which has not started at this point of terms of that, and and the earliest commercialization date for us to have a label in the program, which has not started at this point.  I mean, It's way out there, and it would be another \$100 million development program, which has not started at this point.  I mean, it's way out there, and it	2	MR. HANSEN: Objection, form,	2	it says: Holaira, Treatment For COPD and
5 BYMR. WALZ: 6 Q. But the Holaira System will compete with the A lair System; is that correct? 8 A. No, it will not. 9 Q. You said though that the Holaira System 10 could possibly treat asthma? 11 A. We have no clinical development program for 11 asthma, and every pulmonologist, as well as 12 interventional pulmonologist, sees them as 13 distinctly different diseases, and the only 15 way we could treat asthma would be if we 16 started over from scratch with a completely 17 new Phase 1, you know, feasibility study in 18 asthma patients, which, at this point, there 19 has been nothing initiated to start such a 10 program. It would be unaffordable for us to 11 do that. 12 Q. To start 12 A. An asthma program. 13 A. If in the future, if a new 14 if another company were to buy Holaira, they 15 could make a decision to start an asthma 16 program in theory, but understand that it 17 would be going all the way back to the 18 starting point and starting at point 0 in 19 terms of that, and and the earliest 10 commercialization date for us to have a 11 shell indication for asthma, it somebody 12 wanted to start that today, might be 2025. 13 I mean, it's way out there, and it 14 would be another \$100 million development 15 program, which has not started at this 16 point. 17 (Exhibit Number 8 was marked.) 18 BYMR. WALZ: 19 Q. Showing you what's been marked as Deposition 20 Exhibit Number 8. 21 Q. And what is this? 22 A. Yes, yes. 23 Q. And what is this? 24 A. This is a presentation that I gave at the	3	foundation and hearsay.	3	Asthma, right?
6 Bate-numbered 12 7 Alair System: is that correct? 8 A. No, it will not. 9 Q. You said though that the Holaira System 10 could possibly treat asthma? 11 A. We have no clinical development program for asthma, and every pulmonologist, as well as interventional pulmonologist, as we	4	THE WITNESS: No, I don't agree.	4	A. Yes, yes.
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8 A. No, it will not. 9 Q. You said though that the Holaira System 10 could possibly treat asthma? 11 A. We have no clinical development program for asthma, and every pulmonologist, as well as interventional pulmonologist, sees them as distinctly different diseases, and the only way ecould treat asthma would be if we started over from scratch with a completely new Phase 1, you know, feasibility study in asthma patients, which, at this point, there is has been nothing initiated to start such a program. It would be unaffordable for us to do that. 20 Drostart	6	Q. But the Holaira System will compete with the	6	Bate-numbered 12
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do that.  Q. To start  A. An asthma program.  Q an asthma program?  A. Yes.  Page 87  Page 89  1 Q. But you are marketing that to your investors as a potential area of growth, correct?  A. If in the future, if a new if a new if anew if another company were to buy Holaira, they could make a decision to start an asthma program in theory, but understand that it would be going all the way back to the starting point and starting at point 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025.  I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  (Exhibit Number 8 was marked.)  By MR. WALZ:  Do those checkmark; under asthma, there's a checkmark; and under emphysema, there's a checkmark.  Do those checkmarks indicate that the Holaira device can be used  Page 89  A. Yes.  Q to treat these conditions?  A. Yes, it could, yes.  Q. And then if we move below the Holaira box, there's an entry for BSC that says, formerly Asthmatx/Alair; and under that, we see a checkmark in asthma?  A. Yes.  Q. And that indicates that the Alair System is used to treat asthma, correct?  A. Yes.  Q. And Boston Scientific is identified on a chart where you've labeled it competitive landscape as a competitor, correct?  A. Yes.  Q. And if we turn to the very last page I'm sorry, page 17, Bates-labelled 18, we see a slide labeled itled: Series D Financing Highlights I'm sorry, page 17, Bates-labelled 18, we see a slide labeled itled: Series D Financing Highlights I'm sorry, are you there?  A. Yes, yes.  Q. And what is this?  A. Yes, yes.  Q. And underneath the bulliet point, Milestones Through 2016, there's a subpoint for asthma as part of the clinical heading?  A. Yes.	19	has been nothing initiated to start such a	19	the second box below company product,
22	20	program. It would be unaffordable for us to		
23 A. An asthma program. 24 Q an asthma program? 25 A. Yes.  Page 87  Page 87  Page 89  1 Q. But you are marketing that to your investors as a potential area of growth, correct? 2 A. If in the future, if a new if a new if another company were to buy Holaira, they could make a decision to start an asthma program in theory, but understand that it would be going all the way back to the starting point and starting at point 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025. 13 I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  (Exhibit Number 8 was marked.) 10 Showing you what's been marked as Deposition Exhibit Number 8. 21 Do you recognize this document? 22 A. Yes, yes. 23 Q. And what is this? 24 A. This is a presentation that I gave at the	21	do that.		under COPD, there's a checkmark; under
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22 A. Yes, yes. 23 Q. And what is this? 24 A. This is a presentation that I gave at the 25 Through 2016, there's a subpoint for asthma as part of the clinical heading? 26 A. Yes.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. If in the future, if a new if a new if another company were to buy Holaira, they could make a decision to start an asthma program in theory, but understand that it would be going all the way back to the starting point and starting at point 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025.  I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  (Exhibit Number 8 was marked.)  BY MR. WALZ:  Q. Showing you what's been marked as Deposition	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Q to treat these conditions?</li> <li>A. Yes, it could, yes.</li> <li>Q. And then if we move below the Holaira box, there's an entry for BSC that says, formerly Asthmatx/Alair; and under that, we see a checkmark in asthma?</li> <li>A. Yes.</li> <li>Q. And that indicates that the Alair System is used to treat asthma, correct?</li> <li>A. Yes.</li> <li>Q. And Boston Scientific is identified on a chart where you've labeled it competitive landscape as a competitor, correct?</li> <li>A. Yes.</li> <li>Q. And if we turn to the very last page I'm sorry, page 17, Bates-labelled 18, we see a slide labeled titled: Series D Financing Highlights I'm sorry, are you there?</li> </ul>
23 Q. And what is this? 24 A. This is a presentation that I gave at the 25 as part of the clinical heading? 26 A. Yes.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. If in the future, if a new if a new if another company were to buy Holaira, they could make a decision to start an asthma program in theory, but understand that it would be going all the way back to the starting point and starting at point 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025.  I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  (Exhibit Number 8 was marked.)  BY MR. WALZ:  Q. Showing you what's been marked as Deposition Exhibit Number 8.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>Q to treat these conditions?</li> <li>A. Yes, it could, yes.</li> <li>Q. And then if we move below the Holaira box, there's an entry for BSC that says, formerly Asthmatx/Alair; and under that, we see a checkmark in asthma?</li> <li>A. Yes.</li> <li>Q. And that indicates that the Alair System is used to treat asthma, correct?</li> <li>A. Yes.</li> <li>Q. And Boston Scientific is identified on a chart where you've labeled it competitive landscape as a competitor, correct?</li> <li>A. Yes.</li> <li>Q. And if we turn to the very last page I'm sorry, page 17, Bates-labelled 18, we see a slide labeled titled: Series D Financing Highlights I'm sorry, are you there?</li> <li>A. Yeah, I know it. Go ahead.</li> </ul>
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25 Piper Jattray Healthcare Conference. 20 Q. And that there's six months of data from the	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. If in the future, if a new if a new if another company were to buy Holaira, they could make a decision to start an asthma program in theory, but understand that it would be going all the way back to the starting point and starting at point 0 in terms of that, and and the earliest commercialization date for us to have a label indication for asthma, if somebody wanted to start that today, might be 2025.  I mean, it's way out there, and it would be another \$100 million development program, which has not started at this point.  (Exhibit Number 8 was marked.)  BY MR. WALZ:  Q. Showing you what's been marked as Deposition Exhibit Number 8.  Do you recognize this document?  A. Yes, yes.  Q. And what is this?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>Q to treat these conditions?</li> <li>A. Yes, it could, yes.</li> <li>Q. And then if we move below the Holaira box, there's an entry for BSC that says, formerly Asthmatx/Alair; and under that, we see a checkmark in asthma?</li> <li>A. Yes.</li> <li>Q. And that indicates that the Alair System is used to treat asthma, correct?</li> <li>A. Yes.</li> <li>Q. And Boston Scientific is identified on a chart where you've labeled it competitive landscape as a competitor, correct?</li> <li>A. Yes.</li> <li>Q. And if we turn to the very last page I'm sorry, page 17, Bates-labelled 18, we see a slide labeled titled: Series D Financing Highlights I'm sorry, are you there?</li> <li>A. Yeah, I know it. Go ahead.</li> <li>Q. And underneath the bullet point, Milestones Through 2016, there's a subpoint for asthma as part of the clinical heading?</li> </ul>
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10 if our lead investor wanted us to start one, 10 smooth muscle through targeted lung	
11 that's when this could be available, but, in 11 denervation, correct?	
12 fact, when we closed the \$40 million 12 A. That that's what we believe, yeah.	
13 <b>financing, our new investors did not want to</b> 13 Q. So, then you will have to discuss the risk	
14 do an asthma program. 14 and benefits with or the physician will,	
15 So, therefore, this has completely 15 with respect to TLD, and you'll also have to	
16 dropped off the radar screen, if that makes 16 discuss any alternatives, correct?	
17 sense to you. 17 A. Yes, yes.	
18 Q. Yep. 18 Q. And an alternative would be bronchial	
19 <b>A. So, our clinical program is emphysema and</b> 19 thermoplasty?	
20 chronic bronchitis. 20 A. For what we do? No, bronchial thermop	lasty
21 Q. Let's talk a little bit about targeted lung 21 is not indicated for COPD I mean, for	
22 denervation. 22 chronic bronchitis or emphysema.	
So, I think, as you testified 23 Q. But that so, bronchial thermoplasty,	
before, targeted lung denervation, TLD, is 24 though, has an effect on the smooth muscle	
25 the generic name that you have created for 25 tissue?	
Page 91 Page	93
1 your procedure, correct? 1 <b>A. Yes.</b>	
2 <b>A. Yes.</b> 2 Q. And	
3 Q. And that's similar to what, you know, 3 A. That's what they say, yes.	
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#### Page 94 Page 96 1 Q. But a patient with chronic asthma, though, 1 there's nothing even in the works. 2 2 if they were to talk to a physician about They would have absolutely no 3 TLD, a physician would have to have a 3 obligation to tell a patient that. 4 4 BY MR. WALZ: discussion at least about what treatment is 5 available for asthma, correct? 5 Q. Okav. 6 A. No, because there's --6 A. And even if they did, it would be totally 7 7 MR. HANSEN: Object to form. unavailable. 8 THE WITNESS: -- there's no label 8 Q. Okay. So, what -- yeah, I guess, again, 9 indication for what we do. 9 we're talking -- again, you're not using the 10 BY MR. WALZ: 10 mark -- the device -- so, I'm not talking 11 Q. Is there ever any operable use? 11 about -- we need to think about in terms of 12 A. Huh? 12 when your product is actually available and 13 Q. Does operable use happen at all? 13 gets approval, A. It never -- it never happens with a 14 14 A. Right. 15 non-commercially-approved product. 15 Q. So, when you're both in the market --16 16 Α. 17 17 So, the two treatments are now 18 Q. Oh, right, obviously. We're not -- yeah, 18 actually available. 19 right, I guess, yeah, to bring --19 TLD is available to persons? 20 A. I mean, if they want to go to jail, they can 20 A. For asthma -- I mean, excuse me, TLD for 21 do that if they want. 21 chronic bronchitis and emphysema, right? 22 Q. Yeah, we're talking about a product that is 22 Q. COPD, right? 23 not yet commercialized, right? 23 A. No. 24 A. Right. 24 Q. That's --25 Q. We're talking about an intent to use 25 A. No, if you are choosing to arbitrarily use Page 95 Page 97 1 COPD as this higher bucket, like your thing 1 trademark application. 2 2 So, just so I understand, as part says, then -- then it's an inappropriate 3 of a -- of a doctor's informed consent 3 umbrella, because we are only going to be 4 4 approved for emphysema and chronic obligation, you're saying that a patient 5 5 bronchitis. that they're advising with respect -- that 6 6 has chronic asthma would not have to be told (Exhibit Number 9 was marked.) 7 that, in addition to targeted lung 7 BY MR. WALZ: 8 8 Q. Handing you what's been marked as Deposition denervation, which could be used to treat 9 their condition, there's a separate 9 Exhibit 9. 10 procedure called bronchial thermoplasty, 10 If you turn to the second page? 11 which could be an alternative to targeted 11 A. Yep. 12 12 Q. This is -- it's titled: Six Degrees lung denervation? 13 Confidential Backgrounder. 13 MR. HANSEN: Object to the form, 14 14 lack of foundation. Do you recognize this document? 15 A. What's the date of this one? October 12. THE WITNESS: Absolutely not. 15 16 Yeah, this one would have been created about 16 You're really mixed up on this. You know, 17 the -- an asthma patient under any 17 a week after I started, but I recognize a 18 circumstances, no doctor in the world would 18 lot of the things in here. I'm not sure 19 tell an asthma -- would tell an asthma 19 I've seen this before, but go ahead. 20 patient that TLD is an alternative therapy 20 Q. Okay. So, if we look at just even the 21 executive summary, and this was -- let me 21 for what they have. 22 TLD at this point is an 22 back up. 23 experimental therapy only being tested in 23 I mean, the intent of this document was to educate Six Degrees, who was your 24 chronic bronchitis and emphysema that, 24 25 they will get an approval, and 25 marketing firm that was retained to help you

	Page 98		Page 100
1	with the naming process, right	1	A. And and that's that's how we use it,
2	A. Yes.	2	but the point is is that I'm not denying the
3	Q to understand your company?	3	fact that, if we ever if a future owner
4	A. Yes.	4	or investor or something wanted to start an
5	Q. Okay. So, in the executive summary, there,	5	asthma program, our device could could do
6	it says that: IPS is a system the main	6	that, and that's why it appears in there.
7	objective of the IPS System is the	7	I'm just simply saying we're not doing that
8	development of a commercial product to	8	right now.
9	enable a new therapeutic procedure, TLD,	9	Q. Right.
10	which will improve respiratory function for	10	A. And and if somebody decided to do it, it
11	moderate to severe COPD patients?	11	would be way out there.
12	A. Yes.	12	Q. Okay.
13	Q. And it doesn't say chronic bronchitis or	13	A. And I don't understand what that has to do
14	emphysema, correct?	14	with the trademark anyway.
15	A. You know	15	Q. Yeah, this is just this is just you
16	MR. HANSEN: Feel free to review	16	know, in all of the documents I've seen
17	the entire document before you answer	17	produced by Holaira
18	questions about it.	18	A. Yeah.
19	THE WITNESS: Yeah, I think you're	19	Q reference is always made to COPD. So,
20	taking this out of context. Our COPD	20	that's why I just wanted to get some
21	definition that we use throughout the entire	21	clarification as, you know and you even
22	company is COPD is chronic bronchitis and	22	describe it on your Website as an umbrella
23	emphysema. It is not asthma. Our clinical	23	term?
24	programs, you know, make it clear that	24	A. Over
25	asthma is not included.	25	Q. So
	Page 99		5 101
	rage oo		Page 101
1	But, by the way, could our device	1	Page 101  A over CO over emphysema and chronic
1 2	_	1 2	-
	But, by the way, could our device		A over CO over emphysema and chronic
2	But, by the way, could our device eventually at some point be used to treat	2	A over CO over emphysema and chronic bronchitis, yes.
2 3	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said	2	A over CO over emphysema and chronic bronchitis, yes.  Q. But as we saw in some of those medical
2 3 4	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said that already, but we're not developing it	2 3 4	<ul> <li>A over CO over emphysema and chronic bronchitis, yes.</li> <li>Q. But as we saw in some of those medical definitions, you know, asthma has been</li> </ul>
2 3 4 5	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said that already, but we're not developing it for that. So, that's the answer to your	2 3 4 5	<ul> <li>A over CO over emphysema and chronic bronchitis, yes.</li> <li>Q. But as we saw in some of those medical definitions, you know, asthma has been included as under the umbrella?</li> </ul>
2 3 4 5 6	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said that already, but we're not developing it for that. So, that's the answer to your question.	2 3 4 5 6	<ul> <li>A over CO over emphysema and chronic bronchitis, yes.</li> <li>Q. But as we saw in some of those medical definitions, you know, asthma has been included as under the umbrella?</li> <li>A. I will go on the record though as the vast</li> </ul>
2 3 4 5 6 7	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said that already, but we're not developing it for that. So, that's the answer to your question.  You know, so	2 3 4 5 6 7	<ul> <li>A over CO over emphysema and chronic bronchitis, yes.</li> <li>Q. But as we saw in some of those medical definitions, you know, asthma has been included as under the umbrella?</li> <li>A. I will go on the record though as the vast majority of people in this space of the</li> </ul>
2 3 4 5 6 7 8	But, by the way, could our device eventually at some point be used to treat asthma? The answer is yes, and I've said that already, but we're not developing it for that. So, that's the answer to your question.  You know, so BY MR. WALZ:	2 3 4 5 6 7 8	<ul> <li>A over CO over emphysema and chronic bronchitis, yes.</li> <li>Q. But as we saw in some of those medical definitions, you know, asthma has been included as under the umbrella?</li> <li>A. I will go on the record though as the vast majority of people in this space of the experts separate asthma under a completely</li> </ul>
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	Page 102		Page 104
1	it called? Is it the naming concept?	1	right of that medical community box; and
2	So, you previously testified that	2	then at the far right, we have consumers?
3	you were targeting only interventional	3	A. Yes.
4	pulmonologists with respect to your sales	4	Q. So, you're you're telling me you're not
5	efforts?	5	going to target consumers?
6	A. It was the primary target.	6	A. Our our marketing our marketing
7	Q. So, it's not the only target?	7	efforts right now are clearly related to the
8	A. It's not the only target.	8	interventional pulmonologists. I mean, we
9	Q. Okay. What are some of the other targets?	9	certainly don't want to hide this from the
10	A. Well, if you're putting if you wear my	10	patients. We do no active marketing to
11	hat as the CEO, my primary targets are,	11	patients, but eventually down the line
12	number one, the customer, which is	12	down the line, if you have a novel medical
13	interventional pulmonologists. Number two,	13	therapy, you wouldn't I mean, you're not
14	you're you're also targeting with what	14	going to block that from happening, but
15	you do the investors. That's critical for a	15	you're not going to spend money on it.
16	company at our stage.	16	Q. You will not spend money on even down the
17	You know, those would be you	17	road on
18	know, those would be the two most important,	18	A. On actively reaching out to the patients. I
19	so	19	mean, this will be something with I mean,
20	Q. Anyone else?	20	patients with COPD and emphysema come to
21	A. Well, I mean, you're also I mean, you're	21	their pulmonologist, and then and they
22	also you're also going to target general	22	it's that pulmonologist then that will be
23	pulmonologists. You're going to target all	23	the key decision-maker, the interventional
24	of the physicians, you want to have an	24	pulmonologist.
25	awareness of that, and you want to target	25	Q. So, will you make any once you're
	Page 103		Page 105
1	future acquirers, you know, of the company,	1	commercialized, will you make any marketing
2	you know, so, you know, you want to put out	2	material that potentially could be
3	to you want to reach out to all of them,	3	distributed to a consumer?
4	and you're happy to have patients gain	4	A. We have no plans at this point. Would we do
5	awareness of it as well.	5	the stuff like what the pharmaceutical
6	Q. So, you won't reach out to patients?	6	companies do with direct TV marketing, l
7	A. Not directly, no.	7	actually don't believe in that.
8	Q. Okay. If you turn to the page Bate-numbered	8	Q. But you'll so, it's not in your plan to
	FOO though a title though of the general		
9	538, there's a title there of the report	9	create any marketing material, but is it a
10	called Audience Audiences?	10	possibility?
10 11	called Audience Audiences?  A. Which page?	10 11	possibility?  A. Maybe for some big company in the future.
10 11 12	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.	10 11 12	possibility?  A. Maybe for some big company in the future.  They might choose to do it. It would be a
10 11 12 13	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.	10 11 12 13	possibility?  A. Maybe for some big company in the future.  They might choose to do it. It would be a highly ineffective way to do it I think,
10 11 12 13 14	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you	10 11 12 13 14	possibility?  A. Maybe for some big company in the future.  They might choose to do it. It would be a highly ineffective way to do it I think, but
10 11 12 13 14 15	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you got it right there.	10 11 12 13 14 15	possibility?  A. Maybe for some big company in the future.  They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?
10 11 12 13 14 15	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go.	10 11 12 13 14 15 16	possibility?  A. Maybe for some big company in the future.  They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that
10 11 12 13 14 15 16	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go.  Q. Yep. So, it's titled, Audiences; you see	10 11 12 13 14 15 16 17	possibility?  A. Maybe for some big company in the future. They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that only a highly sophisticated subspecialist
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10 11 12 13 14 15 16 17 18 19 20 21	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go.  Q. Yep. So, it's titled, Audiences; you see that at the top?  A. Um-hmm.  Q. And at the far right actually, let's back up.	10 11 12 13 14 15 16 17 18 19 20 21	possibility?  A. Maybe for some big company in the future. They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that only a highly sophisticated subspecialist I don't really see St. Jude and Medtronic going to customers to market their particular type of aortic valve prostheses, you know, when they when the patient
10 11 12 13 14 15 16 17 18 19 20 21 22	called Audience Audiences?  A. Which page? Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine. Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go. Q. Yep. So, it's titled, Audiences; you see that at the top?  A. Um-hmm. Q. And at the far right actually, let's back up.  On the left, we have the medical	10 11 12 13 14 15 16 17 18 19 20 21 22	possibility?  A. Maybe for some big company in the future. They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that only a highly sophisticated subspecialist I don't really see St. Jude and Medtronic going to customers to market their particular type of aortic valve prostheses, you know, when they when the patient would have no idea what the right prostheses
10 11 12 13 14 15 16 17 18 19 20 21 22 23	called Audience Audiences?  A. Which page?  Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine.  Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go.  Q. Yep. So, it's titled, Audiences; you see that at the top?  A. Um-hmm.  Q. And at the far right actually, let's back up.  On the left, we have the medical community, which you talked about, right,	10 11 12 13 14 15 16 17 18 19 20 21 22 23	possibility?  A. Maybe for some big company in the future. They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that only a highly sophisticated subspecialist I don't really see St. Jude and Medtronic going to customers to market their particular type of aortic valve prostheses, you know, when they when the patient would have no idea what the right prostheses is for the aortic valve. It is possible?
10 11 12 13 14 15 16 17 18 19 20 21 22	called Audience Audiences?  A. Which page? Q. It's Bate-numbered 538.  A. I don't seem to have numbers on mine. Q. It's on the right lower right. Yeah, you got it right there.  A. Oh, here we go. Q. Yep. So, it's titled, Audiences; you see that at the top?  A. Um-hmm. Q. And at the far right actually, let's back up.  On the left, we have the medical	10 11 12 13 14 15 16 17 18 19 20 21 22	possibility?  A. Maybe for some big company in the future. They might choose to do it. It would be a highly ineffective way to do it I think, but  Q. To market the Holaira?  A. To go direct to patients with a product that only a highly sophisticated subspecialist I don't really see St. Jude and Medtronic going to customers to market their particular type of aortic valve prostheses, you know, when they when the patient would have no idea what the right prostheses

4	Page 106		Page 108
1	TLD, correct?	1	A. Four names on there, yep.
2	MR. HANSEN: I'm just going to	2	Q. And Xolair, you mentioned, was a drug?
3	lodge an objection. You're sometimes you	3	A. Yes.
4	pronounce it Holaira, and sometimes you	4	Q. Singulair is a pharmaceutical?
5	pronounce it Olaira [ph]. I just want to	5	A. Yes.
6	make sure that you're meaning Dr. Wahr's	6	Q. VitalAire is a pharmaceutical?
7	company.	7	A. Yes.
8	MR. WALZ: Well, as you know, I	8	Q. And Alere, L-A A-L-E-R-E, is that a
9	mean, there's no right way to pronounce a	9	pharmaceutical as well?
10	coined term. So	10	A. Yes.
11	MR. HANSEN: But I think the issue	11	Q. Do you know how prevalent the use is of the
12	is you're switching back and forth. I just	12	Xolair mark?
13	want to make sure that	13	A. It's I don't. I don't know what their
14	MR. WALZ: Yeah, Olaira, Holaira, I	14	market share is, no, but it's displayed
15	mean, that's referring to yeah.	15	prominently at you know, on trade booths,
16	MR. HANSEN: Okay.	16	you know, at pulmonary meetings, so I assume
17	BY MR. WALZ:	17	it's being used commercially quite a bit.
18	Q. So, let's look at Exhibit Number 2, and if	18	Q. Does the Holaira device compete with Xolair?
19	we turn to the page Bate-numbered 111?	19	A. No.
20	A. Got it.	20	Q. Does it compete with Singulair?
21	Q. So, it's true that, at all times during this	21	A. No.
22	naming and branding process, that your	22	Q. Does it compete with VitalAire?
23	company, you were aware of Boston	23	A. No.
24	Scientific's Alair System, correct?	24	Q. And how about Alere?
25	A. Yes.	25	A. No. It doesn't compete with bronchial
	Page 107		Page 109
1	Q. And this page that we're looking at, 111, is	1	thermoplasty either.
2	the list of short names, as you testified	2	Q. I didn't ask you that question, sir.
3	to, and you've also testified that you	3	•
4			You also mentioned that you had
	needed to get creative people involved, you	4	You also mentioned that you had received from consumer feedback about the
5	needed to get creative people involved, you needed to select a name a new name that	4 5	•
5 6	needed to select a name a new name that		received from consumer feedback about the
		5	received from consumer feedback about the Holaira mark in in connection with the
6	needed to select a name a new name that was completely unique, correct?  A. Yes.	5 6	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received
6 7	needed to select a name a new name that was completely unique, correct?	5 6 7	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative
6 7 8	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?	5 6 7 8	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative  A. No.
6 7 8 9	needed to select a name a new name that was completely unique, correct?  A. Yes. Q. Unlike any other, correct? A. That was the goal.	5 6 7 8 9	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback?
6 7 8 9 10	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately,	5 6 7 8 9	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal
6 7 8 9 10 11	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string	5 6 7 8 9 10 11	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal concern when we just were talking about it,
6 7 8 9 10 11	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?	5 6 7 8 9 10 11 12	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback.
6 7 8 9 10 11 12	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?  MR. HANSEN: Form.	5 6 7 8 9 10 11 12 13	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback. Q. So, you did no external testing or
6 7 8 9 10 11 12 13	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?  MR. HANSEN: Form.  THE WITNESS: Yes.	5 6 7 8 9 10 11 12 13	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback. Q. So, you did no external testing or A. No.
6 7 8 9 10 11 12 13 14	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?  MR. HANSEN: Form.  THE WITNESS: Yes.  BY MR. WALZ:	5 6 7 8 9 10 11 12 13 14 15	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative A. No. Q potential negative feedback? A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback. Q. So, you did no external testing or A. No. Q surveys or anything?
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6 7 8 9 10 11 12 13 14 15 16 17 18	needed to select a name a new name that was completely unique, correct?  A. Yes. Q. Unlike any other, correct? A. That was the goal. Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?  MR. HANSEN: Form.  THE WITNESS: Yes. BY MR. WALZ: Q. And that is the same string of letters that's in the Boston Scientific Alair mark, correct?  A. Yes.	5 6 7 8 9 10 11 12 13 14 15 16 17 18	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative  A. No.  Q potential negative feedback?  A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback.  Q. So, you did no external testing or A. No.  Q surveys or anything?  A. That was just our internal discussion.  Q. And when you testified that there had not been any confusion, you had also testified that you're not using the mark yet in the
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	needed to select a name a new name that was completely unique, correct?  A. Yes.  Q. Unlike any other, correct?  A. That was the goal.  Q. Yet the Holaira mark that you ultimately, you know, settled on has the L-A-I-R string included in it, correct?  MR. HANSEN: Form.  THE WITNESS: Yes.  BY MR. WALZ:  Q. And that is the same string of letters that's in the Boston Scientific Alair mark, correct?  A. Yes.  Q. And you also testified that, based on attending meetings, that you were aware of a lot of "air" marks, although when you	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	received from consumer feedback about the Holaira mark in in connection with the prefix "Ho," that you you had received some some negative  A. No.  Q potential negative feedback?  A. No, we didn't that was an internal concern when we just were talking about it, you know, but no consumer feedback.  Q. So, you did no external testing or A. No. Q surveys or anything?  A. That was just our internal discussion.  Q. And when you testified that there had not been any confusion, you had also testified that you're not using the mark yet in the United States, correct?  MR. HANSEN: Object to form, foundation, misstates prior testimony.

	Page 110		Page 112
1	said no.	1	else, and we can wrap-up.
2	MR. HANSEN: Yeah, and you added to	2	MR. HANSEN: Sounds like a plan.
3	the question, and you said that, "you	3	MR. WALZ: Go enjoy our 4th of
4	haven't been using the mark in the	4	July.
5	United States." I think he said it's on	5	(Break taken.)
6	their business cards, it's on their Website,	6	MR. WALZ: I've got no further
7	it's on their letterhead.	7	questions for you, Dr. Wahr.
8	MR. WALZ: I take that back.	8	MR. HANSEN: And I have no further
9	MR. HANSEN: I think you misstated	9	questions for you either, Dr. Wahr.
10	prior testimony.	10	We'll read and sign. Thank you.
11	BY MR. WALZ:	11	(At 11:40 a.m., the deposition was
12	Q. Okay. So, you haven't used the Holaira mark	12	recessed.)
13	in connection with the system, the medical	13	
14	device that you applied for, correct?	14	
15	A. Applied for for to who? So, in the	15	
16	United States, it's on our Website. We show	16	
17	our business cards to US docs, you know, and	17	
18	we and, you know, we aren't treating any	18	
19	patients in the US, but, you know, US docs	19	
20	clearly know about know about Holaira.	20	
21	Q. It's on the device yet, correct?	21	
22	A. Oh, you mean on a device that we use in a	22	
23	clinical setting?	23	
24	Q. Right.	24	
25	A. But we well, first of all, we're not	25	
	Page 111		Page 113
1	Page 111 no, we haven't used the device in the US.	1	Page 113 ERRATA SHEET
1 2	_	1 2	
	no, we haven't used the device in the US.		ERRATA SHEET
2	no, we haven't used the device in the US.  Q. Right.	2	ERRATA SHEET
2	no, we haven't used the device in the US.  Q. Right.  A. But it's not on there anyway, but we haven't	2 3	ERRATA SHEET
2 3 4	no, we haven't used the device in the US.  Q. Right.  A. But it's not on there anyway, but we haven't used one even if it was.	2 3 4	ERRATA SHEET
2 3 4 5	no, we haven't used the device in the US.  Q. Right.  A. But it's not on there anyway, but we haven't used one even if it was.  Q. "Holaira" doesn't appear on the device?	2 3 4 5	ERRATA SHEET
2 3 4 5 6	no, we haven't used the device in the US.  Q. Right.  A. But it's not on there anyway, but we haven't used one even if it was.  Q. "Holaira" doesn't appear on the device?  A. I mean, not on our commercial device, no. I mean, it's projected to be on our on our device, you know, when we go commercial, but	2 3 4 5 6	ERRATA SHEET
2 3 4 5 6 7	no, we haven't used the device in the US.  Q. Right.  A. But it's not on there anyway, but we haven't used one even if it was.  Q. "Holaira" doesn't appear on the device?  A. I mean, not on our commercial device, no. I mean, it's projected to be on our on our	2 3 4 5 6 7	ERRATA SHEET
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1 2 3 4 5 6 7	I, DR. DENNIS WAHR, have read this deposition transcript pages 1 - 112 and acknowledge herein its accuracy except as noted on the errata sheet.	
8 9	Signature	
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Notary Public	

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		Ü
1	STATE OF MINNESOTA	
	CERTIFICATE	
2	COUNTY OF WASHINGTON	
3	I, Alexis Jensen, hereby certify	
4	that I reported the deposition of	
4	Dr. Dennis Wahr on the 2nd day of July, 2015	
5	in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell	
3	the truth and nothing but the truth	
6	concerning the matter in controversy	
Ü	aforesaid;	
7		
	That I was then and there a notary	
8	public in and for the County of Washington,	
	State of Minnesota; that by virtue thereof I	
9	was duly authorized to administer an oath;	
10	That the foregoing transcript is a	
	true and correct transcript of my	
11	stenographic notes in said matter,	
4.0	transcribed under my direction and control;	
12	That the cost of the original has	
13	That the cost of the original has been charged to the party who noticed the	
13	deposition and that all parties who ordered	
14	copies have been charged at the same rate	
	for such copies;	
15	•	
	That the reading and signing of	
16	the deposition was not waived;	
17	That I am not related to any of	
	the parties hereto, nor interested in the	
18	outcome of the action and have no contract	
10	with any parties, attorneys or persons with	
19	an interest in the action that has a	
20	substantial tendency to affect my impartiality;	
21	WITNESS MY HAND AND SEAL this 10th	
- '	day of July, 2015.	
22		
23		
24	Alexis Jensen	
	Notary Public	
25		

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 85806379 Filing Date: 12/19/2012** 

## The table below presents the data as entered.

Input Field	Entered			
SERIAL NUMBER	85806379			
MARK INFORMATION				
*MARK	HOLAIRA			
STANDARD CHARACTERS	YES			
USPTO-GENERATED IMAGE	YES			
LITERAL ELEMENT	HOLAIRA			
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.			
REGISTER	Principal			
APPLICANT INFORMATION				
*OWNER OF MARK	Innovative Pulmonary Solutions, Inc.			
NTERNAL ADDRESS Suite 105				
*STREET	3750 Annapolis Lane			
*CITY	Plymouth			
*STATE (Required for U.S. applicants)	Minnesota			
*COUNTRY	United States			
*ZIP/POSTAL CODE (Required for U.S. applicants only)	55447			
LEGAL ENTITY INFORMATION				
ТУРЕ	corporation			
STATE/COUNTRY OF INCORPORATION	Delaware			

GOODS AND/OR SERVICES AND BASIS INFORMATION

INTERNATIONAL CLASS 010

FILING BASIS			
A TELOPHICA THEORY	Medical devices; medical apparatus and instruments  SECTION 1(b)		
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AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Dennis W. Wahr/
SIGNATORY'S NAME	Dennis W. Wahr
SIGNATORY'S POSITION	CEO
DATE SIGNED	12/19/2012

#### Trademark/Service Mark Application, Principal Register

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#### To the Commissioner for Trademarks:

MARK: HOLAIRA (Standard Characters, see <u>mark</u>)
The literal element of the mark consists of HOLAIRA.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Innovative Pulmonary Solutions, Inc., a corporation of Delaware, having an address of Suite 105, 3750 Annapolis Lane Plymouth, Minnesota 55447 United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 010: Medical devices; medical apparatus and instruments Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Barbara J. Grahn and Erika Koster, Barbara Wrigley, Ed Laine, Sam Hellfeld, Aaron Scott of Oppenheimer Wolff & Donnelly, LLP

Suite 2000 222 South Ninth Street Minneapolis, Minnesota 55402 United States

The attorney docket/reference number is 24450-2001.

The applicant's current Correspondence Information:

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612-607-7325(phone)

612-607-7100(fax)

bgrahn@oppenheimer.com;ipdocket@oppenheimer.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

#### Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

#### **Declaration Signature**

Signature: /Dennis W. Wahr/ Date: 12/19/2012

Signatory's Name: Dennis W. Wahr

Signatory's Position: CEO RAM Sale Number: 11875

RAM Accounting Date: 12/19/2012

Serial Number: 85806379

Internet Transmission Date: Wed Dec 19 12:26:54 EST 2012 TEAS Stamp: USPTO/BAS-70.102.26.226-2012121912265408

6922-85806379-490f36f35d729fb827649d5612 4ccf1559-DA-11875-20121218180009245281

# HOLAIRA



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# HOLAIRA

Word Mark

**HOLAIRA** 

**Translations** 

The wording "HOLAIRA" has no meaning in a foreign language.

**Goods and Services** 

IC 010. US 026 039 044. G & S: Medical devices for treating obstructive lung diseases:

medical apparatus and instruments for treating obstructive lung diseases

Standard Characters

Claimed

**Mark Drawing Code** 

(4) STANDARD CHARACTER MARK

**Serial Number** 

85806379

Filing Date

December 19, 2012

**Current Basis** 

1B

**Original Filing Basis** 

**Published for** 

Opposition

December 3, 2013

International

**Registration Number** 

1167434

Owner

(APPLICANT) HOLAIRA, INC. CORPORATION DELAWARE SUITE 105 3750

ANNAPOLIS LANE PLYMOUTH MINNESOTA 55447

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record Type of Mark

Barbara J. Grahn

Register

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## **Trademark/Service Mark Application, Principal Register**

Serial Number: 85914385 Filing Date: 04/25/2013

### The table below presents the data as entered.

Input Field	Entered Entered		
SERIAL NUMBER	85914385		
MARK INFORMATION			
*MARK	DNERVA		
STANDARD CHARACTERS	YES		
USPTO-GENERATED IMAGE	YES		
LITERAL ELEMENT	DNERVA		
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.		
REGISTER	Principal		
APPLICANT INFORMATION			
*OWNER OF MARK	Holaira, Inc.		
INTERNAL ADDRESS	Suite 105		
*STREET	3750 Annapolis Lane		
*CITY	Plymouth		
*STATE (Required for U.S. applicants)	Minnesota		
*COUNTRY	United States		
*ZIP/POSTAL CODE (Required for U.S. applicants only)	55447		
LEGAL ENTITY INFORMAT	TION CONTROL OF THE C		
TYPE	corporation		
STATE/COUNTRY OF INCORPORATION	Delaware		
GOODS AND/OR SERVICES	AND BASIS INFORMATION		
INTERNATIONAL CLASS	010 EXHIBIT		

*IDENTIFICATION	Medical devices; medical apparatus and instruments	
FILING BASIS	SECTION 1(b)	
ATTORNEY INFORMATION		
NAME	Barbara J. Grahn	
ATTORNEY DOCKET NUMBER	24450-2004	
FIRM NAME	Oppenheimer Wolff & Donnelly, LLP	
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CITY	Minneapolis	
STATE	Minnesota	
COUNTRY	United States	
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AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes	
OTHER APPOINTED ATTORNEY	Erika Koster, Barbara Wrigley, Ed Laine, Sam Hellfeld, Andrew Hansen, Dennis Hansen, Aaron Scott	
CORRESPONDENCE INFORM	ATION	
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FIRM NAME	Oppenheimer Wolff & Donnelly, LLP	
INTERNAL ADDRESS	Suite 2000	
STREET	222 South Ninth Street	
CITY	Minneapolis	
STATE	Minnesota	
COUNTRY	United States	
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PHONE	612-607-7325	
FAX	612-607-7100	
EMAIL ADDRESS	bgrahn@oppenheimer.com;ipdocket@oppenheimer.com	

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/dennis wahr/
SIGNATORY'S NAME	Dennis W. Wahr
SIGNATORY'S POSITION	CEO
DATE SIGNED	04/25/2013

#### Trademark/Service Mark Application, Principal Register

**Serial Number: 85914385 Filing Date: 04/25/2013** 

#### To the Commissioner for Trademarks:

**MARK:** DNERVA (Standard Characters, see <u>mark</u>)
The literal element of the mark consists of DNERVA.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Holaira, Inc., a corporation of Delaware, having an address of Suite 105,
3750 Annapolis Lane
Plymouth, Minnesota 55447
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 010: Medical devices; medical apparatus and instruments Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Barbara J. Grahn and Erika Koster, Barbara Wrigley, Ed Laine, Sam Hellfeld, Andrew Hansen, Dennis Hansen, Aaron Scott of Oppenheimer Wolff & Donnelly, LLP

Suite 2000 222 South Ninth Street Minneapolis, Minnesota 55402 United States

The attorney docket/reference number is 24450-2004.

The applicant's current Correspondence Information:

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bgrahn@oppenheimer.com;ipdocket@oppenheimer.com (authorized)

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#### **Declaration Signature**

Signature: /dennis wahr/ Date: 04/25/2013

Signatory's Name: Dennis W. Wahr

Signatory's Position: CEO RAM Sale Number: 85914385 RAM Accounting Date: 04/25/2013

Serial Number: 85914385

Internet Transmission Date: Thu Apr 25 11:39:10 EDT 2013 TEAS Stamp: USPTO/BAS-70.102.26.226-2013042511391098

4874-85914385-500516f577ad1ab485c6727dde ec3c7642d6215271fbe3ee354e5bc4ea097214db

4-DA-9156-20130424194812306502

# DNERVA



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# DNERVA



Word Mark

**DNERVA** 

**Goods and Services** 

IC 010. US 026 039 044. G & S: Medical devices for treating obstructive lung diseases;

medical apparatus and instruments for treating obstructive lung diseases

Standard Characters

Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

**Serial Number** 

85914385

Filing Date

April 25, 2013

**Current Basis** 

1B

**Original Filing Basis** 

**1B** 

Published for

Opposition

April 15, 2014

International

**Registration Number** 

1181913

Owner

(APPLICANT) Holaira, Inc. CORPORATION DELAWARE Suite 105 3750 Annapolis Lane

Plymouth MINNESOTA 55447

**Attorney of Record** 

Barbara J. Grahn

Type of Mark

TRADEMARK

Register

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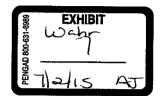
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### **COPD** - definition of COPD by Medical dictionary

http://medical-dictionary.thefreedictionary.com/COPD

### COPD

Also found in: Dictionary/thesaurus, Legal, Acronyms, Encyclopedia, Wikipedia.



### chronic [kron'ik]

persisting for a long time; applied to a morbid state, designating one showing little change or extremely slow progression over a long period.

**chronic airflow limitation** (CAL) any pulmonary disorder occurring as a result of increased airway resistance or of decreased elastic recoil; the diseases most often associated are ASTHMA, chronic BRONCHITIS, and chronic pulmonary EMPHYSEMA. Called also **chronic obstructive pulmonary disease**.

Chronic airflow limitation has the highest morbidity rate of any significant chronic pulmonary disorder in the United States and is the second most common cause of hospital admissions. It is difficult to estimate its exact incidence because most diseases of the respiratory tract are not reportable and there is some confusion in definition of terms related to diseases of this type. However, the Social Security Administration reports that CAL ranked only second to heart disease as the cause of disability in men over the age of 40. The incidence of CAL is increasing and, although not all specific causes are known, factors contributing to its development and affecting its degree of severity have been identified. Heavy cigarette smoking is probably the most important factor, and others are industrial pollution, occupational exposure to irritating inhalants, allergy, autoimmunity, genetic predisposition, and chronic infections.

Prevention is best accomplished through education of the public about the hazards of cigarette smoking and air pollution and the need for early detection and prompt treatment of respiratory disorders that could become chronic in nature. The American Lung Association is particularly interested in education of lay persons in these matters and in the prevention of all types of respiratory disorders. This agency, which has local offices distributed throughout the country, is an excellent source of information about prevention and the latest developments in the treatment of respiratory diseases.

SYMPTOMS. This is an insidious disease that can develop into advanced lung damage almost before its victim is aware that the condition is serious. The early symptoms are shortness of breath upon exertion, a mild cough (sometimes called "smoker's cough"), which occurs most often in the morning, and easy fatigability that follows even minimal physical effort. Prompt treatment of these symptoms can forestall the more serious effects of extensive lung damage; however, the destruction of lung tissue and bronchial mucosa damage that has already occurred by the time these symptoms appear is irreversible.

As the disease progresses, the symptoms of dyspnea, weakness, and cough become more severe. The patient has difficulty expelling air from the lungs and the cough becomes more productive of thick, tenacious sputum. The patient looks anxious and drawn and may speak in short, hesitant sentences. Symptoms related to disturbances of the respiratory and circulatory systems and ACID-BASE BALANCE may appear as these complications develop.

COMPLICATIONS. Destructive involvement of respiratory structures and the resultant impairment of circulatory function can produce serious life-threatening complications. Among these are acute respiratory failure, disturbance in the acid-base balance (which can occur either as uncompensated **respiratory** ACIDOSIS or metabolic ALKALOSIS), bronchopulmonary infections, COR PULMONALE (the result of increased resistance in

pulmonary circulation), **pulmonary EMBOLISM** (especially if polycythemia is severe), and PEPTIC ULCER. BLOOD GAS ANALYSIS is helpful in evaluating effectiveness of blood gas exchange across alveolar walls. In severe chronic airflow limitation, the  $Pa_{CO_2}$  level is high while the  $Pa_{O_2}$  and the  $Sa_{O_2}$  levels are low.

TREATMENT AND PATIENT CARE. In general, treatment is concerned with restoring and maintaining existing lung function, relieving symptoms, and planning a program of rehabilitation tailored to accommodate the individual patient's physiologic needs, physical stamina, vocational needs, lifestyle, and personality. Specific measures of patient care are concerned with (1) initial and periodic evaluation of patient status, (2) maintenance of general health as much as possible, (3) prevention and control of infection, (4) improvement of ventilation, and (5) patient education.

Chronic airflow limitation is a disease that has no cure; its chronic nature requires an ongoing program of assessment and long-term care that is planned and revised as the patient's needs dictate. Whatever the patient care setting—acute care facility, out-patient clinic, long-term care facility, or home—the elements of care presented below are essential to the effective management of the condition.

Evaluation. Patient assessment begins with the taking of the patient's history and performing physical examination and lung function tests at the time the diagnosis is established. These measures, along with blood gas analysis at rest and after exercise, provide a baseline for periodic evaluation of the patient's status to determine the progress of the disease and the effectiveness of treatment.

When patients are informed about the purpose of the tests and therapy they are more likely to participate in the planned regimen of care and to become motivated to continue carrying out their responsibilities in the management of their illness. Those who work with the patient should clarify the goals and offer encouragement when they make progress toward those goals, no matter how slight the improvement might be. This implies, of course, that all members of the health care team have an understanding of the disease, the meaning of various test values, and the purpose of each aspect of care.

Maintenance of Health Status. It is important to communicate to these patients the concept of health status, particularly in regard to their position on the health-illness continuum. They cannot be completely disease-free or restored to their former state of health. They can, however, manage the disease symptoms for periods of time and some may even make progress toward a better state of health. For those patients who continue to deteriorate despite appropriate care, encouragement should be provided to maintain as much function as possible.

Poor appetite and the potential for dehydration are problems commonly associated with pulmonary disease. Purulent sputum, coughing, and fatigue can contribute to loss of interest in eating. Mouth breathing, increased respiratory rate, and frequent expectorating contribute to the loss of fluid.

Frequent oral hygiene and mouth care can help diminish mouth odor and unpleasant taste. A short period of rest just prior to each meal can help overcome the problem of fatigue. Meals should be spaced so that the stomach is not overloaded at any one time; five small meals, rather than three a day, can help avoid overfilling of the stomach and interference with breathing. Postural drainage and similar procedures should not be done on a full stomach, nor should they be scheduled just before a meal. Adequate hydration can be accomplished by an intake of at least 3000 ml of liquid each day. Unless contraindicated, this should include bouillon, fruit juices, and other liquids the patient finds enjoyable and refreshing.

Physical activity may be severely limited by CAL because of inadequate ventilation and decreased circulation. As with all other aspects of patient care, plans to increase exercise tolerance and promote physical activity should be designed according to the patient's cardiopulmonary status. Techniques to promote muscular relaxation and breathing control are the first step, followed by gradual increase in activity as the patient's progress and general physical condition permit.

Adequate rest is essential, but the HAZARDS OF IMMOBILITY must be avoided, especially in patients who are fearful that any physical activity may precipitate an exhausting episode of coughing and dyspnea. The goal is to provide sufficient rest so that the body's natural restorative processes can work, but to avoid long periods of sleeping and lying in bed during the day.

When the patient's cardiopulmonary condition is such that bed rest is prescribed, care is taken to avoid complete physical inactivity, which will only serve to increase problems of inadequate ventilation and muscle weakness. Proper positioning is essential and should be such that the neck is extended, with the chin well off the chest. Support under the thighs while the patient is supine will release tension on abdominal muscles, thereby facilitating movement of the diaphragm for deep breathing and effective coughing. The arms and hands should also be supported on pillows and positioned away from the sides to allow for maximum lung expansion without elevation of the upper chest. A foot board is placed so as to maintain good posture, promote comfort, and ensure good muscle tone in the legs and feet.

Prevention and Control of Infection. Acute respiratory infection can be fatal in patients with chronic airflow limitation. Chronic infections inflict further damage to the respiratory structures, lead to increased debilitation, and increase the likelihood of severe complications. Both acute and chronic infections produce increased secretions in the air passages, which further restrict the flow of air.

Contact with others who have an upper respiratory infection should be avoided, as should being in large crowds during the season when such infections are common. A high level of resistance should be maintained through good personal hygiene and adequate nutrition. Vaccines to guard against influenza are recommended. Patients should be taught to watch for changes in color and amount of sputum. If a change in sputum or any other symptoms of infection appear, this should be reported.

Improvement of Ventilation. It is obvious that measures to improve ventilation in the patient with CAL are of primary importance, and perhaps that is why so many ways have been devised to facilitate the flow of air to and from the lungs. Breathing is most difficult during the expiratory phase, making it difficult to remove trapped air and secretions. In addition, the bronchial walls are weakened in patients with emphysema and are subject to collapse. Health status and physical condition at the time the technique is used will affect the choice of method and its effectiveness.

Hydration is considered especially valuable in improvement of ventilation. Inhaled air should be moist so as to thin the secretions for removal and soothe the irritated mucous membranes. This can be accomplished through the use of vaporizers and humidifiers, either for environmental humidification in the patient's room or in conjunction with oxygen therapy and the administration of aerosols. Oral intake of fluids is also important. Bronchodilators, usually in the form of aerosols, sometimes as oral medications, are usually prescribed. The aerosol method of delivery depends on the ability of the patient to breathe deeply so that the medication reaches the lower segments of the respiratory tract.

Controlled deep breathing patterns are especially helpful in emptying the lungs and providing adequate ventilation. The patient with CAL is taught to expand the lower chest and to use the accessory muscles

and diaphragm to improve the breathing pattern. Performance of these breathing patterns is important because patients probably are not in the habit of breathing in the most effective manner, making optimum use of remaining pulmonary function. The patient is taught slow, controlled, and steady breathing. Respiratory effort should be concentrated on slow expiratory flow through parted or pursed lips. Pushing the air out of the lungs too forcefully can bring on collapse of the airway structures. During instruction, the caregiver watches for signs of exhaustion and warns against overdoing the deep breathing until the patient has adjusted to it. A correct breathing pattern should be coordinated with all of the patient's daily activities so that it becomes habitual and is done without too much thought.

Effective coughing does not come easily to patients with this condition. They may have experienced too many episodes in which a dry hacking cough has caused exhaustion, increased dyspnea, and prevented removal of tenacious sputum from the air passages. They must be convinced that, when done correctly, coughing can remove mucous plugs and relieve rather than produce dyspnea. Patients should be warned that explosive coughing is not very effective, can damage the airways, and can lead to exhaustion. The objective of coughing is to move secretions upward gradually so that they can be expectorated.

POSTURAL DRAINAGE is also valuable in facilitating the removal of mucus from the air passages. The various maneuvers involved in this procedure are designed to take advantage of gravity flow as a means of clearing specified segments of the air passages when normal air flow is not sufficient to move secretions or stimulate the cough reflex. Chest percussion and vibration may be employed during postural drainage to loosen secretions. OXYGEN THERAPY is used as a supportive measure when there is decreased oxygenation of arterial blood. It can be administered to ambulatory patients being cared for at home. Blood gas analysis is an excellent guide in determining the need for initiating oxygen therapy and for monitoring dosage.

Patient Education. As with all chronic diseases that require long-term planning and management, patient education is of primary importance in successful execution of the plan. Each of the measures previously described involves instruction of the patient and family, particularly when care is carried out on an outpatient basis. The patient should be told *why* it is necessary to stop smoking, avoid other irritating inhalants, carry out good health practices, take medication only as prescribed, and faithfully perform techniques to improve ventilation. Those patients who follow the exercises prescribed for them often find they can lead more active lives than formerly. Exertional dyspnea becomes less severe and complications from infections caused by bacteria in secretions formerly trapped in the respiratory tract are less frequent. Active participation in a program of self-care gives these patients a sense of control and improves their self-esteem.

chronic fatigue syndrome (chronic fatigue and immunodeficiency syndrome) persistent debilitating fatigue of recent onset, with reduction of physical activity to less than half of usual, accompanied by some combination of muscle weakness, sore throat, mild fever, tender lymph nodes, headaches, and depression, with the symptoms not attributable to any other known causes. Its nature is controversial; viral infection (including Epstein-Barr virus and human herpesvirus-6) may be associated with it, but no causal relationship has been demonstrated. A number of names have been used for this syndrome, including Iceland disease and benign myalgic encephalomyelitis.

**chronic granulomatous disease** chronic suppurative lymphadenitis, eczematoid dermatitis, enlargement of the liver and spleen, and chronic pulmonary disease associated with a genetically determined defect in the intracellular bactericidal function of leukocytes.

chronic obstructive lung disease (COLD) (chronic obstructive pulmonary disease (COPD)) chronic airflow limitation.

chronic regional pain syndrome reflex sympathetic dystrophy.

Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. All rights reserved.

#### COPD

Abbreviation for chronic obstructive pulmonary disease.

Farlex Partner Medical Dictionary © Farlex 2012

### COPD chronic obstructive pulmonary disease.

Dorland's Medical Dictionary for Health Consumers. © 2007 by Saunders, an imprint of Elsevier, Inc. All rights reserved.

### COPD

abbr.

chronic obstructive pulmonary disease

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### COPD,

abbreviation for chronic obstructive pulmonary disease.

Mosby's Medical Dictionary, 8th edition. © 2009, Elsevier.

COPD Chronic obstructive pulmonary disease Pulmonology An umbrella term for a group of usually progressive lung disorders with overlapping signs and symptoms, including asthma, bronchiectasis, chronic bronchitis, and emphysema; COPD, usually associated with a long Hx of cigarette smoking, is the 5<sup>th</sup> most common COD–65,000 deaths/yr, US, the 3<sup>rd</sup> most common–after heart diseases and schizophrenia–cause of chronic disability of older individuals, and the most common cause of pulmonary HTN and cor pulmonale in the US; the major COPD lesions, chronic bronchitis and emphysema, commonly coexist; the former is responsible for the alveolar hypoxia, ↓ PO₂, ↑ CO₂, and ↓ pH that lead to pulmonary HTN, which is seen in 65% of ♂ at autopsy and 15% of ♀, and is due to the unopposed effect of elastases in the lungs Clinical SOB, wheezing, chronic cough Diagnosis Clinical Hx, PE, pulmonary function tests Complications Bronchitis, pneumonia, lung cancer; Pts with COPD have been divided into type A with emphysema, fancifully known as 'pink puffers' and type B with chronic bronchitis—'blue bloaters'; respiratory function and dyspnea in severe COPD may improve with theophylline, which improves respiratory-muscle function Management Bronchodilators, O₂ for advanced disease Prevention Smoking cessation, ↑ dietary n-3 polyunsaturated fatty acids may protect against COPD, possibly by interfering with the

production of inflammatory mediators, including leukotrienes, platelet-activating factor, IL-1 and TNF. See **Emphysema**.

#### Management of COPD

Minimize airflow restriction

Reduce production of secretions

↑ Eliminate secretion

Bronchodilatation

Sympathomimetic agents, eg inhaled  $\beta_2$ -adrenoreceptor agonists

Anticholinergic agents, eg ipratropium, nebulized atropine

Theophylline

Corticosteroids-maximum benefit in 1st 2 wks of therapy (NEJM 1999; 340:1941oa)

Correct 2º physiologic alterations

Hypoxemia-O<sub>2</sub> administration

Pulmonary hypertension and cor pulmonale

Hypercapnia

Optimize functional capacity

Exercise conditioning

Upper extremity training

Respiratory muscle training

Respiratory muscle rest

Dyspnea

Nutrition

Physical and occupational therapy

Psychosocial rehabilitation

Other issues of management

α<sub>1</sub>-antitrypsin augmentation

Bullectomy

Lung transplantation

Antibiotics with exacerbations

Smoking cessation

McGraw-Hill Concise Dictionary of Modern Medicine. © 2002 by The McGraw-Hill Companies, Inc.

### COPD

Abbreviation for chronic obstructive pulmonary disease.

Medical Dictionary for the Health Professions and Nursing © Farlex 2012

# Chronic obstructive pulmonary disease (COPD)

A term used to describe chronic lung diseases, like chronic bronchitis, emphysema, and asthma.

Mentioned in: Bronchitis

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chronic obstructive airway disease; COAD; chronic obstructive pulmonary disease; COPD; chronic obstructive lung disease; COLD airway dysfunction (e.g. chronic bronchitis or emphysema) in cigarette smokers, or ex-smokers; presenting as type A, 'pink puffers' (breathlessness but near normal arterial oxygen and carbon dioxide levels), or type B, 'blue bloaters' (no breathlessness, but marked arterial hypoxia, carbon dioxide retention and polycythaemia)

Illustrated Dictionary of Podiatry and Foot Science by Jean Mooney © 2009 Elsevier Limited. All rights reserved.

#### COPD

Abbreviation for chronic obstructive pulmonary disease.

Medical Dictionary for the Dental Professions © Farlex 2012

### COPD

chronic obstructive pulmonary disease (COPD).

Saunders Comprehensive Veterinary Dictionary, 3 ed. © 2007 Elsevier, Inc. All rights reserved

### Patient discussion about COPD

- **Q. Yoga for COPD?** I was diagnosed with COPD two years ago, and so far I manage to keep on with my life, although I stopped my regular exercise. A friend of mine that also has COPD told me about yoga exercises for COPD patients- Does anyone here knows something about it?
  - A. Yoga can teach you how to breath properly, and is also a very good exercise. It's also very relaxing which is also good for you lung, and you can enjoy it. Just give it a try, but ask your physician first.
- Q. (COPD)chronic obstructive pulmonary disease the main causes of?
  - A. Mainly smoking, although ambient air pollution and industrial exposure to dust have also been implicated as causes.

You may read more here:

www.mayoclinic.com/health/copd/DS00916

#### More discussions about COPD

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A Mode Tend Parenting Partnership

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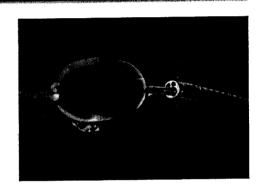
# Holaira

GUIDES FOR PiperJaffray.



# Holaira: Treatment for COPD & Asthma

- Addresses unmet clinical need
- Easy to use
- · Reduce health care costs
- · Massive markets



### **Current Status**

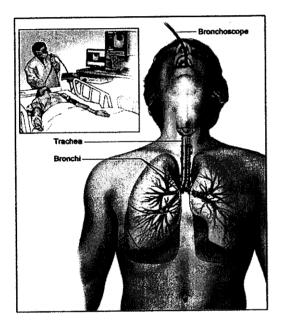
- Novel Concept: Exceptional IP position
- Exciting human data with 12 month follow up
- Proven leadership team

Positioned to achieve meaningful value builders



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# Targeted Lung Denervation (TLD)



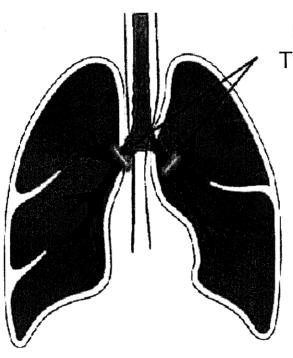
- Employs RF energy to ablate the nerve input to the lungs which will:
  - Induce a generalized bronchodilation
  - Decrease mucus production
  - Decrease inflammation
- Outpatient procedure with sustained benefit



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# Targeted Lung Denervation (TLD)

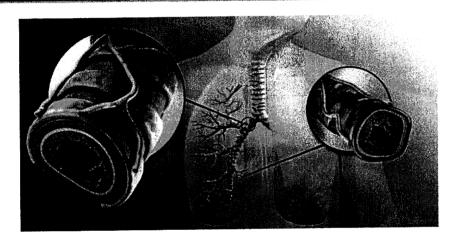


Point of Treatment

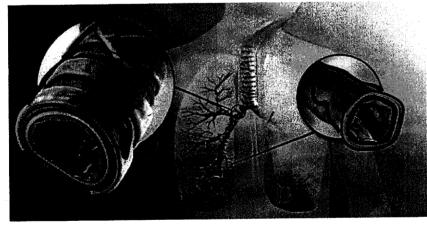




# Before / After TLD Therapy



**Before** 

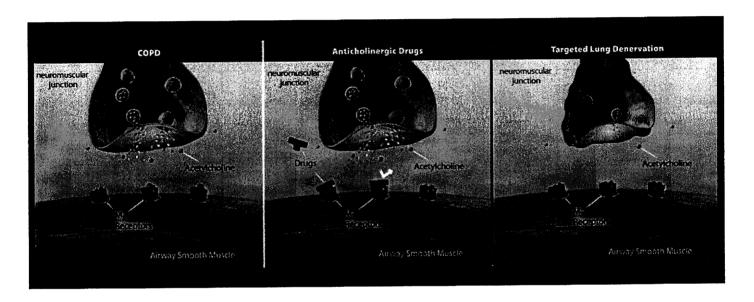


After



4

### TLD Mechanism of Action well understood



Targeted Lung Denervation reduces acetylcholine release from the nerve ending resulting in:

- Smooth muscle cell relaxation
- Sustained airway dilation

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## Clinical benefits: TLD vs Drugs

	TLD	Anticholinergic Medications
Lung Distribution	Whole lung	Incomplete
Adherence	Sustained benefit	Poor
Misuse	Sustained benefit	Poor
Peak/trough variation	Stable benefit	Unavoidable
Potential synergistic effect	Y.	es.

 Not subject to limitations of medication but with potential for synergistic effect



### **Preclinical Animal Studies**

<b>Animal Studies Summary</b>	
Studies performed	14
Animals studied	94
Airways treated	.187
Activations delivered	1099
Days of longest follow-up	640
Days in life	10,221



### Major Findings:

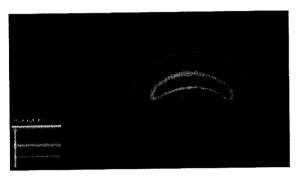
- TLD. disrupts bronchial nerve branches and improves airway resistance.
- Effect of TLD sustained for almost 2 years
- Depth of effect tunable based on power
- Surface cooling with balloon protects airway surface and prevents stenosis



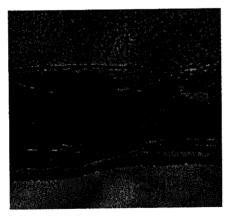
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# Surface Protection is key



> 120 Bench-top thermal tests



8 > 1300 In vivo animal histology

# Surface protection and dosing — seen and quantified

- Bench top
- Ex vivo
- In vivo



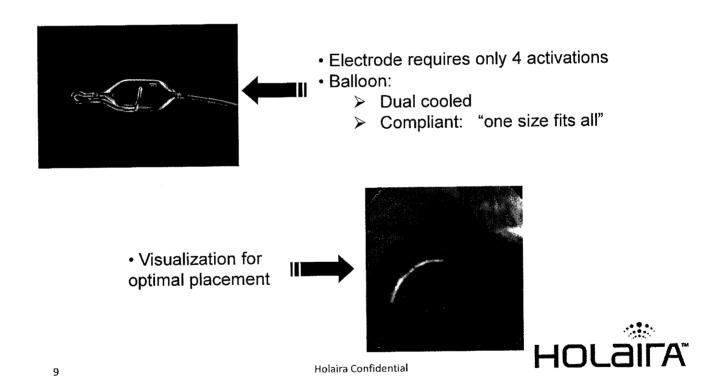
560 Ex vivo ablations



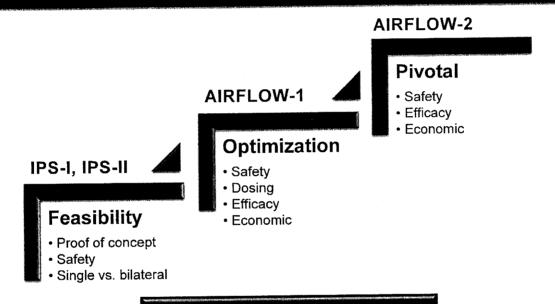


# Holaira™ Lung Denervation System

### **Catheter Features**



### **COPD Clinical Program Overview**



### Clinical Program Goals:

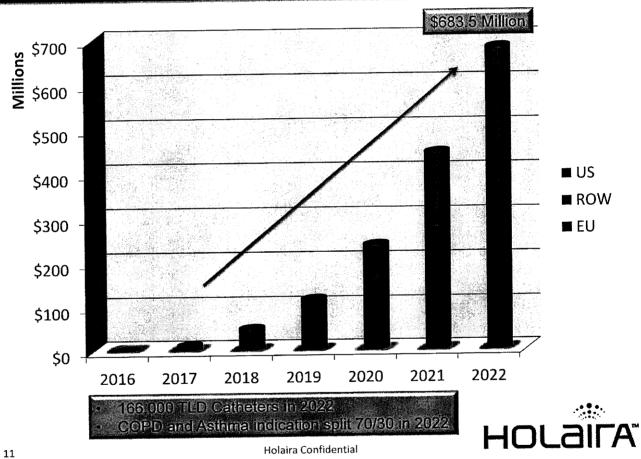
- Establish safety and efficacy
- Establish economic savings



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# WW Revenue Projections



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# Obstructive Airway Disease: Competitive Landscape

Company/Product	COPD Large Population	Asthma Intermediate Population	Emphysema Smaller Population	MOA	Ease of Use
Boehringer ingelheim/ Spiriva	•			Temporary block of acetylcholine receptors	Inhaler 3 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Holaira		<b>'</b>	<b>√</b>	Sustained block	ung Denervation of acetylcholine release fuse advantage
BSC (formerly Asthmatx)/ Alair®		<b>√</b>		Smooth muscle cell ablation	Requires 3 outpatient procedures; > 200 total ablations in small airways
PneumRx/RePneu <sup>TM</sup> Pulmonx/Zephyr® Olympus/ IBV Valve System AerisTherapeutics/AeriSeal Uptake Medical/Intervapor <sup>TM</sup>			Ž	<u>Lung Volume</u> <u>Reduction</u> .	Challenging planning required



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# 90+ portfolio of patents, applications and licenses

- · Owned by Holaira
  - 5 US patents
  - 3 foreign patents (Europe, China, Japan)
  - 23 pending US
  - 1 pending PCT
  - 9 pending EU
  - 6 pending Japan, China
  - 9 other foreign

- Under Non-Exclusive License
  - 11 US applications pending
  - 12 US Patents
  - 2 PCT applications pending
  - 2 foreign applications pending
  - 2 foreign Patents (Europe, Australia)
- Under Exclusive License
  - 4 US Patents
  - 1 US application pending
  - 1 PCT application pending

hnvestment exceeds \$1.500 in external expenses Fillings in 80% of global market



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### **Current Investors & Board Members**

#### **Investors**

**Versant Ventures** 

**Morgenthaler Ventures** 

**Split Rock Ventures** 

**Advanced Technology Ventures** 

#### **Board Members**

Dennis Wahr M.D., President and CEO Mike Carusi, Advanced Technology Ventures Mark Deem, The Foundry Kirk Nielsen, Versant Ventures Hank Plain, Morgenthaler Ventures Dave Stassen, Split Rock Ventures



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### Management Team



### Dennis Wahr, M.D: President & CEO

- · Founder, Pres. and CEO both Lutonix & Velocimed
- Board certified Interventional Cardiologist



### Martin Mayse, M.D: Founder and CTO

- · Former Director Interventional Pulmonology at Wash Univ
- · Board certified Pulmonologist
- · Biomedical Engineer



### **Steve Mertens: Senior VP Operations**

- · Sr. VP R&D Boston Scientific
- >20yrs biomedical engineer experience
- MBA

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### Management Team



### Mahtab Fatemi, JD: Director of Regulatory Affairs

- · Director Regulatory Affairs at MAP Pharmaceuticals
- >14 yrs regulatory science experience (US RAC)
- · Masters Degree Science, JD Degree, State Bar of California



#### Kari Kubesh: CFO

- VP Finance at Lutonix
- · CPA, >17yrs finance experience, public and private companies
- >10 years venture capital backed medical device companies



#### Jim Pavliska: VP Clinical

- · Clinical Director Lutonix and Velocimed
- >15 yrs clinical research experience
- Managed > 12 US and International Clinical trials



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# Series D Financing Highlights

- Amount
  - \$40 million
  - Finances company through December 2016
  - Full Insider participation
- Milestones Through 2016
  - Clinical
    - <u>COPD</u>:
      - 12 month data from Phase II randomized study
      - 3 yr data from feasibility studies
      - IDE for US Pivotal Trial
    - Asthma
      - 6 month data from asthma feasibility study
  - Dominant position in new field of pulmonary denervation
    - · Exceptional IP portfolio
    - · Multiple year first mover access to US markets
  - OUS Revenue



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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 85/806,3 Filed: December 19, 2012 For the mark: HOLAIRA Published in the <i>Trademark Official Gazette</i> on I	
Boston Scientific Corporation and Asthmatx, Inc.	Opposition No. 91215699
Opposers,	
v.	AFFIDAVIT OF SERVICE BY UNITED STATES MAIL
Holaira, Inc.	
Applicant.	
STATE OF MINNESOTA ) ) ss. COUNTY OF HENNEPIN )	
Debra Peterfeso, being first duly sworn	upon oath, states that on July 28, 2015, she
served the attached:	
1. CD with the deposition transcript	of Dr. Dennis Wahr, Exhibits 1-9, and 11; and
2. Errata sheet of Dr. Dennis Wahr,	
upon the within named counsel by United States	Mail, using an envelope addressed as set forth
below, with postage prepaid, and depositing the	same in the United States Mail at Minneapolis,

Minnesota:

Timothy D. Sitzmann, Esq. Stephen R. Baird, Esq Bradley J. Walz, Esq. Winthrop & Weinstine Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402-4629

Attorneys for Opposers

DEBRA PETERFESO

Subscribed and sworn to before this 28th day of July, 2015

Votary Public - Minnesota

My Commission Expires Jan. 31, 2020

JULIE ANN ANDERSON
Notary Public-Minnesota
My Commission Expires Jan 31, 2020

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Holaira, Inc.	
Applicant.	-
STATE OF MINNESOTA ) ) ss. COUNTY OF HENNEPIN )	

Debra Peterfeso, being first duly sworn upon oath, states that on November 16, 2015, she served the attached:

- 1. CD with deposition transcripts of Dr. Dennis Wahr (redacted and unredacted versions), Exhibits 1-9, and 11; and
- 2. Signed errata sheet of Dr. Dennis Wahr, upon the within named counsel by United States Mail, using an envelope addressed as set forth below, with postage prepaid, and depositing the same in the United States Mail at Minneapolis, Minnesota:

Timothy D. Sitzmann, Esq. Stephen R. Baird, Esq Bradley J. Walz, Esq. Winthrop & Weinstine Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402-4629

Attorneys for Opposers

DEBRA PETERFESO

Subscribed and sworn to before this 16th day of November, 2015

Notary Public – Minnesota

My Commission Expires Jan. 31, 2020

